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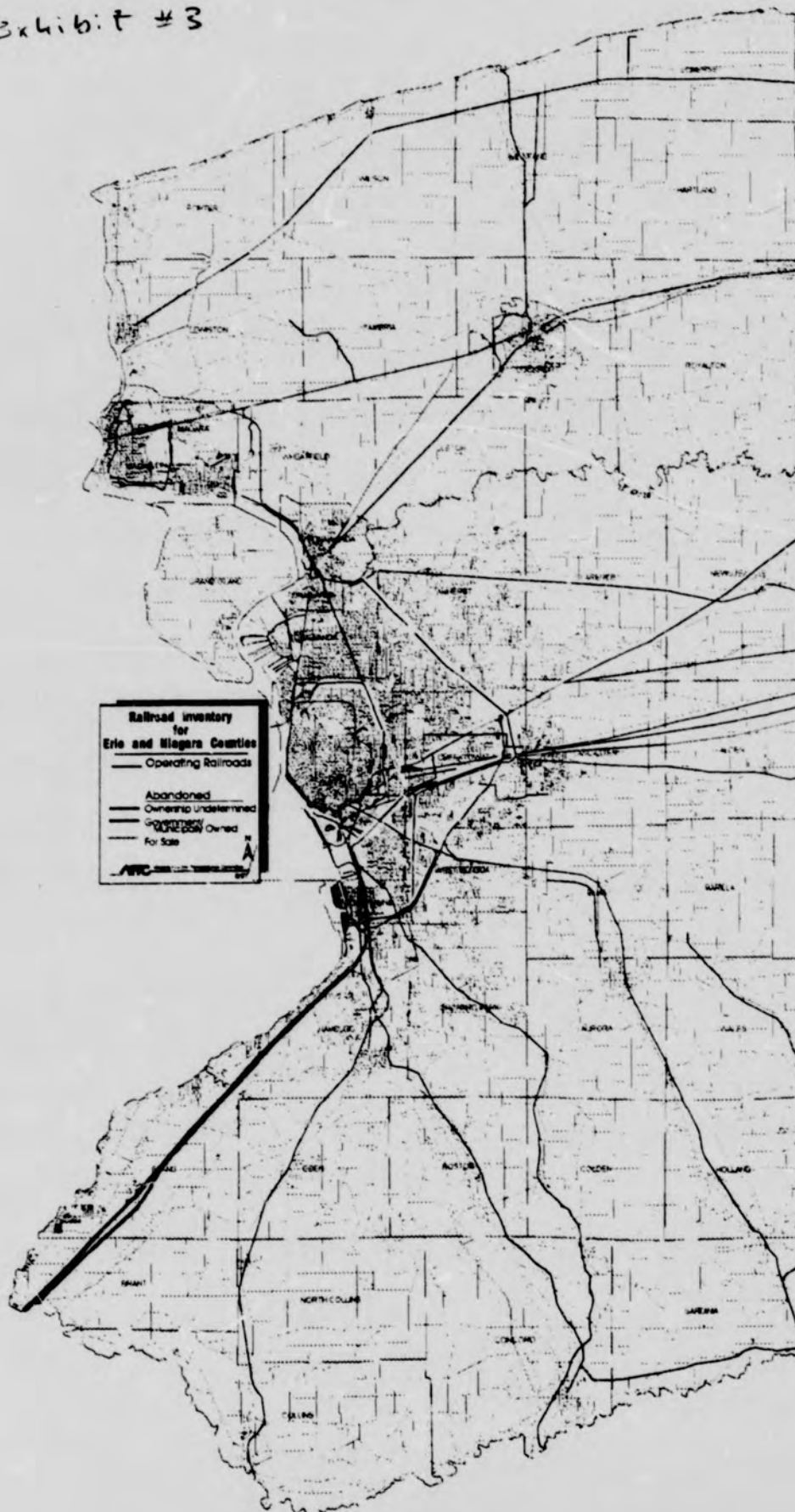
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Exhibit #3





County of Erie

DENNIS T. GORSKI
COUNTY EXECUTIVE

DEPARTMENT OF ENVIRONMENT AND PLANNING
OFFICE OF ECONOMIC DEVELOPMENT

RICHARD M. TOBE
COMMISSIONER

January 24, 1997

STANLEY J. KEYSA
ECONOMIC DEVELOPMENT
COORDINATOR

Lester M. Passa, Vice President
Logistics and Corporate Strategy (215-209-2000-72772-53)
Consolidated Rail Corporation
PO Box 41417
Philadelphia, PA 19101-1417

Re: CSX & Conrail merger

Dear Mr. Passa:

Thank you for the briefing provided Western New York rail users Tuesday morning at the Radisson in Cheektowaga. You have answered many questions, and presented a strong case for the efficiencies and synergies available from the proposed merger.

As I indicated, the Niagara Frontier Transportation Committee (NFTC), which is the Metropolitan Planning Organization (MPO) for Erie and Niagara Counties under the Intermodal Surface Transportation Efficiency Act (ISTEA), is currently reviewing concerns regarding the impact of the merger. The NFTC may become formally involved in the hearings before the Surface Transportation Board (STB). If so, it will shortly present a list of specific concerns.

For timely dialogue, you ought be aware of the gist of those concerns as soon as possible. I am taking the liberty to share some of the issues with you.

1. Economic development depends heavily on ready access to reliable and competitively-priced transportation. The County of Erie believes that the commercial well-being of this area is best met by access to multiple forms of transportation, including rail, highway, air and water. To that end, we applaud any effort to strengthen the viability of rail service, which has had a major presence here for 160 years.

2. The area seeks true rail competition, meaning that at least two strong Class I railroads (operating on their own tracks) should be readily accessible to users, providing fast, reliable and economical service across the spectrum of car types and destinations. It is particularly important that there be competitive access eastward to the Port of New York,

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north to Canada, west through Cleveland and Chicago to the Pacific ports, and south to the coalfields of Pennsylvania, to New Orleans, to Norfolk and to Baltimore.

Subsets of this issue would include expeditious and economical interchange of traffic within the Buffalo terminal area, removal of paper barriers to interchange of cars by short-line and regional railroads, harmonious treatment of competing railroads and those with trackage rights (particularly at CP Draw), development of intermodal capabilities at Bison yards, and protection of regional carriers such as the Buffalo & Pittsburgh RR by continued availability of "overhead" traffic.

3. A perception exists that Conrail abandoned contact with both shippers and public officials in this region, creating frustration on minor issues, and distrust on major ones. The post-merger railroad needs an accessible representative in the Buffalo area. The recent addition of Gerry Edwards to the Conrail staff is certainly a great improvement, and we hope he will be continued and strengthened in his role.

4. Until recently, it has been virtually impossible to deal with Conrail on issues of development where Conrail-owned land was involved. Bureaucratic and petty concerns regarding competition have held back progress. An example was the attempt (now abandoned due to a lack of cooperation by Conrail) to redevelop the Niagara Frontier Food Terminal site in Buffalo. Conrail was never willing to deal with questions involving ownership, environmental issues or trackage rights with Norfolk Southern, even though the project anticipated increased rail usage.

5. In the past, conduct by Conrail led low-volume shippers to believe that rail traffic is unreliable, and that Conrail is not interested in developing relationships necessary to foster a return to rail. This has had serious consequences in the Buffalo area, where many industrial sites were oriented to rail, and are not positioned for tractor-trailer access. Often, instead of using narrow city streets in place of rail, the companies have simply abandoned the older facilities and built new plants where rail is not available. We look for close cooperation with the merged railroad in addressing reuse of these "brownfield" sites, both railroad-owned and adjacent to rail.

6. This area is the crossroads for significant volumes of both east-west and north-south traffic (120 trains clear CP Draw daily; 40% of the trade with Canada crosses the border here). We would like to capitalize on the flow of traffic by adding value, providing labor to move goods on and off railcars at intermodal facilities, breaking bulk at distribution facilities, and servicing the transportation system itself. Again, we look for a merged railroad which is much more aggressive in marketing and servicing local customers than Conrail was in the past.

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7. Conrail itself has significant assets in this area which might be better utilized for the mutual benefit of the merged railroad and the region. For example, Bison Yard has been virtually empty for almost a decade. It is of a size that it could accept both rail-serviced distribution and intermodal facilities. Functionally, it is impaired by the need to route local traffic from Frontier Yard past the relic of Central Terminal and out the Hornell Running Line. Your suggestion of an interconnection in Depew east of Dick Road makes sense. However, NYS Route 130 will soon be reconstructed in that immediate vicinity with an eye to eliminating rail bridges, so prompt coordination with the NFTC and the NYS Department of Transportation is imperative. It may also make sense to provide highway direct connection to the Thruway.

8. Shippers involved in trade with European partners have suggested to us that they might realize significant savings if a railroad serving this area could establish regular intermodal service for containers landed at the port of Montreal.

9. There is a need to rationalize the total rail network in this region, not just for the competitive benefit of one Class 1 railroad, but for the balanced long-term transportation needs of the entire region. Rights-of-way once lost are probably lost forever. While the world and how it moves goods and people will change greatly in the next hundred years, history tells us the need for transportation corridors will remain.

10. There is a continuing interest in enhancing light and heavy rail passenger service. The merger presents opportunities to investigate how portions of the existing network might be economically reshaped to isolate or minimize freight/passenger conflicts.

11. Erie County is engaged in serious lease negotiations with the Buffalo Bills football team to retain their presence at the County-owned stadium in Orchard Park. The Bills have identified expansion of market area as one of their goals, and have conducted talks with Amtrak and others regarding bringing excursion trains from Albany, Cleveland, Binghamton, Toronto, and Pittsburgh for home games. The first run of the "Bills Express" from Albany on November 24, 1996 brought a much stronger response than expected. We seek assurances from a merged railroad that we will have cooperation of the host railroad in expediting and interchanging future excursion trains.

12. Erie County, the Niagara Frontier Transportation Authority, and others are discussing informally the potential for other passenger operations, some of which may require cooperation from whomever acquires lines now owned by Conrail. We look for a management contact within the merged railroad with whom to discuss potential conflicts and synergies.

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13. Conrail has not always been a good neighbor when it comes to keeping its property well-maintained. Numerous bridges are protected only by the accumulation of graffiti, while on others, one can still discern the faded logo of the New York Central. One coat of paint in thirty years ought not be too much to ask. Likewise, I know of miles of drainage ditches fouled by discarded railroad ties. We hope the merged railroad can do better.

I look forward to hearing from you and would welcome an opportunity to meet with you to discuss these issues at your earliest opportunity.

Very truly yours,



STANLEY J. KEYSER, Esq.
Deputy Commissioner for
Planning & Economic Development

SJK:ms

cc: County Executive Gorski
Governor George Pataki
US Senators Moynihan and D'Amato
Congressmen LaFalce, Paxon & Quinn
NYS Senate: Volker, Nanula, Stachowski & Rath
NYS Assembly: Eve, Schimminger, Tokasz, Hoyt, Keane, Smith, Reynolds & Wirth
Clerk, Erie County Legislature
Lewis Rich, ESDC
Dr. Andrew Rudnick, GBP
Donald Smith, NFTC

AMTRAK RIDERSHIP

January 1984 to December 1995

Stations	Date	Origins	Destinations	Total
BUFFALO (بوفالو)	1/84-12/84	33,221	36,329	69,550
	1/85-12/85	36,925	40,519	77,444
	1/86-12/86	35,873	39,090	74,963
	1/87-12/87	39,370	42,540	81,910
	1/88-12/88	41,277	44,719	85,996
	1/89-12/89	42,378	45,125	87,503
	1/90-12/90	44,697	46,609	91,306
	1/91-12/91	47,582	52,362	99,944
	1/92-12/92	48,768	51,494	100,262
	1/93-12/93	44,260	46,760	91,020
	1/94-12/94	43,237	39,351	82,588
	1/95-12/95	51,793	53,552	105,345
	Subtotal	509,381	538,450	1,047,831
BUFFALO EXCHANGE	1/84-12/84	5,208	4,484	9,692
	1/85-12/85	6,617	5,973	12,590
	1/86-12/86	5,804	5,449	11,253
	1/87-12/87	8,028	7,266	15,294
	1/88-12/88	10,168	9,200	19,368
	1/89-12/89	11,640	10,759	22,399
	1/90-12/90	16,683	14,293	30,976
	1/91-12/91	13,063	12,118	25,184
	1/92-12/92	15,309	14,425	29,734
	1/93-12/93	11,590	10,526	22,116
	1/94-12/94	11,691	7,957	19,648
	1/95-12/95	15,330	14,277	29,607
	Subtotal	131,134	116,727	247,861
NIAGARA FALLS	1/84-12/84	21,765	19,604	41,369
	1/85-12/85	22,393	20,248	42,641
	1/86-12/86	22,102	19,634	41,736
	1/87-12/87	24,938	23,818	48,756
	1/88-12/88	30,624	27,536	58,160
	1/89-12/89	29,670	26,122	55,792
	1/90-12/90	29,175	22,739	51,914
	1/91-12/91	30,665	24,716	55,381
	1/92-12/92	22,953	20,988	43,941
	1/93-12/93	23,086	17,457	40,543
	1/94-12/94	24,792	19,531	44,323
	1/95-12/95	18,109	14,733	32,842
	Subtotal	300,272	257,126	557,398
	TOTAL	940,787	912,303	1,853,090

BEFORE THE SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 333888

**CSX CORPORATION AND CSX TRANSPORTATION, INC.,
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
--CONTROL AND OPERATING LEASES/AGREEMENTS--
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION**

VERIFIED STATEMENT OF DR. ANDREW J. RUDNICK

I. BACKGROUND

My name is Andrew J. Rudnick and I am the president and chief executive officer of the Greater Buffalo Partnership (the Partnership). My business address is 300 Main Place Tower, Buffalo, New York, 14202. I have served as president and chief executive officer of GBP since 1993.

The Partnership is the largest employer organization in the Niagara Marketplace with more than 3,300 member firms employing more than 200,000+ individuals. The Niagara Marketplace includes the eight counties of Western New York and the Niagara Peninsula of Southern Ontario. Working for change and progress, the Partnership brings together public and private sector resources to strengthen the economy and quality of life for the two million

residents who live in the region. I am also an adjunct professor, Department of Planning and the Center for Applied Affairs Studies, State University of New York at Buffalo.

As president and CEO of the Partnership, I report to a 66 member board of directors that include many of the largest employers in the region.

Prior to becoming president and CEO of the Partnership, I was CEO of the Greater Buffalo Development Foundation (1986-1993), and the Greater Buffalo Chamber of Commerce (1992-1993), the two principal organizations that amalgamated to form the Greater Buffalo Partnership in 1993. Prior to coming to the area, I was the Executive Vice President of the Houston Economic Development Council (1985-1986) where my responsibilities included strategic planning, fund raising, and technology transfer initiatives. I have also served as Vice President and Director of the Rice Center, Rice University (1981-1985) which was the University's applied public policy/urban research subsidiary. I was responsible for numerous activities including contract and grant development, government relations, budget administration and operations management.

I have been active on the boards and committees of many local business, civic, community, and cultural organizations including: Dunlop Tire Corporation, Greater Buffalo Convention and Visitors Bureau, Buffalo

Philharmonic Orchestra, Western New York Health Sciences Consortium, Arts Council in Buffalo and Erie County, Buffalo Alliance for Education, Canada-U.S. Business Association, Erie County Industrial Development Agency, and the Roswell Park Cancer Institute.

I graduated from Harvard University in 1969; received my M.B.A. from Columbia University in 1971; and my Ph.D. from the University of Alabama in 1976.

I reside in the City of Buffalo with my wife.

The Partnership has been involved with various transportation issues affecting the Niagara Marketplace. Since more than 40,000 of the approximately 200,000 individuals represented by the Partnership work for an organization directly dependent on rail transportation it was an obvious choice for us to review the proposed impact of the division of Conrail.

It became apparent after analyzing the proposed acquisition and division of Conrail that without intervention, the CSX and Norfolk Southern (NS) plan would result in the Niagara Marketplace being adversely impacted and competitively harmed. With this information we organized a letter writing campaign to the Surface Transportation Board opposing the CSX/NS request for an expedited schedule so that we would have the time to better address our competitive concerns. The Partnership became an active member of the Erie/Niagara Rail Steering Committee (the Committee) that includes major shippers,

transportation representatives, elected officials, and economic developers. The Committee's purpose is to act as a regional rail oversight group in relation to the proposed Conrail acquisition and division and to take action to ensure that the interests of rail shippers in the region are protected.

II. THE ERIE/NIAGARA REGION

The Partnership represents the Niagara Marketplace, and I believe the proposed Conrail acquisition affects its large and varied economies, however, as a member of the Committee our position will be stated with respect to Erie and Niagara counties only (Erie/Niagara or "the region").

The Erie/Niagara estimated population for 1995 is 1,184,052. This population has been steadily decreasing since 1970 with an estimated loss of 4.96% from 1980 - 1995. The region is located in the western portion of New York State, along the shore of Lake Erie. The region shares its northwestern border with Canada and mitigated the movement of \$96B (U.S.) in Canadian/U.S. goods and services in 1996 according to U.S. Customs. The two largest municipalities in the region are Buffalo (Erie County) and Niagara Falls (Niagara County). Buffalo, the second largest city in New York State had approximately 312,965 residents in 1994. Niagara Falls residents numbered approximately 60,517 in 1994.

Erie/Niagara has suffered a dramatic decline in its manufacturing base with services dominating the employment sector according to 1993 US Census Bureau information:

EMPLOYMENT BY INDUSTRY GROUP FOR ERIE/NIAGARA

	<u># of Employees</u>	<u>% of Workforce</u>
Services	160,600	35.5%
Retail Trade	101,482	22.4%
Manufacturing	89,676	20.0%
Finance, real estate	29,033	6.4%
Wholesale Trade	27,028	6.0%
Transportation/utilities	25,181	5.6%
Construction	18,087	4.0%
Agricultural Services	1,685	3.7%
Mining	313	>.5%

While many service sectors including call centers, insurance, banking/finance, and freight forwarding have seen growth in Erie/Niagara over the last three years, manufacturing and other sectors that are rail dependent provide the foundation for a strong economy. The inability to be competitive with similar markets, such as Detroit, could devastate the region's economy. An increase in the relative cost of rail to ship or receive product in this region due to the introduction of additional competition in other areas could be expected to result in a loss of jobs causing a detrimental ripple effect throughout our entire economy.

III. THE STB SHOULD CONDITION ITS APPROVAL OF THE CONRAIL ACQUISITION TO PREVENT COMPETITIVE HARM TO THE NIAGARA FRONTIER REGION

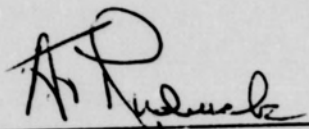
The Erie/Niagara region is a major economic region that includes a substantial amount of businesses that rely upon rail transportation. Many of region's largest employers (and Partnership members) are from the automotive, chemical, utility, grain, and agricultural industries. Conrail maintains a virtual monopoly in the region and subjects many local shippers to unreasonably high transportation rates and charges. I am aware of one business in the Town of Tonawanda, Tonawanda Coke, that brings its coal in by rail to a facility located about 11 miles south of the plant, then **trucks** the coal to the plant to avoid existing switching charges. I am sure you can understand the number of trucks needed to move a rail car of coal and the associated substantial level of transportation costs. As noted in the Verified Statement of G.W Fauth, III, in most cases, the current reciprocal switching charge assessed by Conrail is \$450.00 per car, which effectively eliminates another carrier from serving shippers in the Erie/Niagara area. Companies throughout the Niagara Frontier have told me that with lower reciprocal switching rates, that would allow for real competition in the area, increases in capital investment and plant employment would be seen immediately. Unfortunately, under the current CSX/NS proposal, which

will not allow for two carrier service in the region, artificially high rail rates and charges in Erie/Niagara will be maintained or will worsen, while other regions will experience an increase in competition and a subsequent lowering of rates.

As a Canadian border region with a growing number of exports and imports to and from the Greater Toronto Area (where more than 70% of all Canadian products are manufactured) direct competition results between our region and the major Michigan crossings. Under the proposed CSX/NS agreement, Detroit will become a Shared Assets Area (SAA) and the Erie/Niagara area will not. Without becoming an SAA, Erie/Niagara will undoubtedly be competitively harmed with respect to moving Canadian goods in, out and through the region. This could result in the transfer of production from plants in the region to plants in the Detroit SAA. Erie/Niagara could experience the same detrimental effects in the chemical/allied products industries due to the creation of the Southern New Jersey/Philadelphia SAA.

In order to prevent rail shippers in the Niagara Frontier from suffering serious competitive disadvantages, and the corresponding economic harm to the region as a whole, which would result from the proposed break-up of Conrail, the Greater Buffalo Partnership urges the Surface Transportation Board to grant the relief requested by the Erie-Niagara Rail Steering Committee.

I Anthony J. Rudnick, declare under penalty of perjury that the foregoing is true and correct and that I am qualified and authorized to file this verified statement on behalf of Greater Buffalo Fairness. Executed on this 16th day of October, 1997.


(signature)

BEFORE THE SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388

**CSX CORPORATION AND CSX TRANSPORTATION, INC.,
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
-- CONTROL AND OPERATING LEASES/AGREEMENTS --
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION**

VERIFIED STATEMENT OF SCOTT J. WHITBECK

My name is Scott J. Whitbeck and I am the executive director of the Niagara Business Alliance, Incorporated (the NBA). My Business address is 151 West Genesee Street, Lockport, NY 14094. I have served as executive director and a member of the NBA Board of Directors since January 1997.

The NBA is a regional business association representing more than 3,200 businesses, with more than 40,000 employees throughout Niagara and Erie Counties. The majority of NBA members are in Niagara County. NBA members also include the Eastern Niagara Chamber of Commerce, the Niagara Falls Area Chamber of Commerce and the Chamber of Commerce of the Tonawandas, on behalf of whom I also provide this statement.

The NBA is a nonprofit corporation that is dedicated to promoting economic development, effective government and improving the quality of life in the Niagara Region. As executive director, I report to a twenty eight member board of directors that includes a cross section of Niagara Region employers and shippers.

After an analysis of the proposed division of Conrail it was apparent to me that rail dependent businesses in the Niagara Region would be competitively harmed and would suffer a dramatic negative economic impact in the long-term, if the plan were implemented as proposed by CSX and NS. Given our analysis of the impacts, the NBA wrote the Surface Transportation Board in opposition to the expedited review schedule in June of 1997. The 360 day review has enabled our organization to join with other business associations, shippers, development authorities and local governments within the Niagara Region to form the Erie/Niagara Rail Steering Committee (the Committee).

The Committee is an ad-hoc oversight committee dedicated to the proposed division of Conrail in the Niagara Region. The Committee has analyzed the proposal, tracks the review process and manages the response of the region to the division of Conrail and the anticipated economic impact of the transaction.

The purpose of my verified statement in this proceeding is to show that the division of Conrail is the most important fundamental economic issue facing the Niagara Region. Shippers of the region are presently captive to Conrail and are subject to a monopoly rate structure that has forced many shippers to use truck transportation as a more viable alternative.

The proposed plan submitted by CSX and NS will only maintain the status quo and that is simply not acceptable to the shippers who have already turned to truck transportation or limited operations in the Niagara Region due to the cost of transportation. Competition is essential to improve the rail transportation of this region, without it captive shippers will continue to suffer and truck traffic will continue to increase. The economy of the Niagara Region has long been disadvantaged by the state of rail transportation, with consistently poor service and artificially high rates. According to G.W. Fauth Associates, the

current Conrail reciprocal switch charge is \$450, well above the national average. This situation must not continue for shippers of the Niagara Region, while other regions would benefit from new competition in their market driving prices down.

The inability of the region to compete with similar markets, due to the cost of transporting raw materials and finished products will be detrimental to the economy of our region. While other regions, including Detroit, Philadelphia and parts of New Jersey will benefit from additional competition offered by CSX and NS, the Niagara Region of New York State will be strapped with a continuing monopoly and artificially high rates.

Under the proposal put forth by CSX and NS, the Niagara Region will be at a distinct competitive disadvantage to regions with access to more than one rail carrier provided under their proposed *Shared Assets Area* arrangements.

The primary shippers of coal, chemicals and agricultural products in this region are in direct competition with companies in Detroit, New Jersey and Philadelphia, all of whom will be the beneficiaries of competition. Shippers in these regions, were able to access only one carrier prior to the CSX/NS proposal.

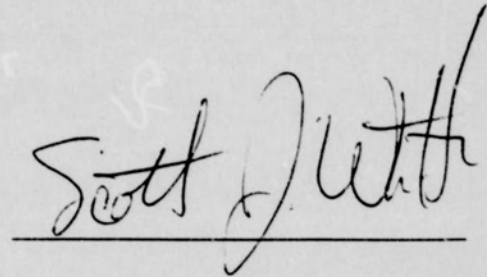
Detroit in particular, is a market of comparable size to the Niagara Region, and competes with the Niagara Region for cross border freight traffic to and from Canada. Should the CSX/NS proposal be implemented, as proposed, this would result in the Niagara Region being rendered non-competitive with Detroit, our primary CAN-AM border competition for movement and forwarding of freight.

On behalf of the Niagara Business Alliance and our member organizations, the Eastern Niagara Chamber of Commerce, the Niagara Falls Area Chamber of Commerce and the Chamber of Commerce of the Tonawandas and our 3,200 member businesses, I respectfully submit, that for the Surface

Transportation Board to mitigate the potential competitive harm to the Niagara Region, a Shared Assets Area and reasonable reciprocal switch rate must be imposed as conditions to the division of Conrail by CSX and NS. This remedy would be consistent with the terms proposed by CSX and NS for the aforementioned other regions, which are in direct competition with the Niagara Region of New York State. This remedy would ensure rail rate parity and prevent competitive harm.

I Scott Whitbeck, declare under penalty of perjury that the foregoing is true and correct and that I am qualified and authorized to file this verified statement on behalf of the Niagara Business Alliance.

Executed on this fifteenth day of October, 1997.

A handwritten signature in cursive script, reading "Scott J. Whitbeck", is written over a horizontal line.

Scott J. Whitbeck

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 33388

CSX CORPORATION AND CSX CORPORATION, INC.,
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
— CONTROL AND OPERATING LEASES / AGREEMENTS —
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

**VERIFIED STATEMENT OF
WARREN J. PATTERSON**

PURPOSE: The purpose of this verified statement is to illustrate the competitive harm to General Mills by the proposed acquisition of the Consolidated Rail Corporation (CR) by CSX Transportation (CSX) and Norfolk Southern Corporation (NS). In Buffalo, the levels of rail cost, to ship ingredients, finished product, and coal to supply our energy needs, are higher than areas that enjoy competitive rail service. Poor customer service is also the norm due to Conrail's virtual monopoly. The proposed acquisition of Conrail will not improve these troublesome conditions but will make matters worse. I will justify and request measures that will reduce or eliminate the competitive harm that will result from the proposal.

I. INTRODUCTION

My name is Warren Patterson, and I am the Transportation Planner at the Buffalo Flour Mill, General Mills Operations, Inc. My business address is 54 South Michigan Avenue, Buffalo, New York, 14203.

As the Transportation Planner, I negotiate, coordinate, and verify all truck and rail shipments entering and leaving three separate warehouse facilities. I manage a privately leased rail car fleet of 47 rail cars, while also utilizing railroad owned equipment. I utilize over 20 different truck carriers to move inbound and outbound bulk, less-than-truckload, local, and interstate freight.

I am a graduate of the University of Delaware with a Bachelor of Science Degree in Electrical Engineering. I am a certified member of the Delaware Professional Engineer Association. I entered the United States Army after completing my degree and the Reserve Officers Training Corps program as a Distinguished Military graduate.

As an Army officer, I attended the Unit Movement Officer Course, Armor Officer Basic Course, Signal Officer Branch Qualification Course, Scout Platoon Leader Course, Dismounted Armor Scout Course, Airborne School, and Air Assault School. I served in positions such as Battalion Logistics Officer, Executive Officer, and Platoon Leader. As part of Operation Uphold Democracy, I deployed and re-deployed by rail, road, sea and air over 700 pieces of rolling stock and containers to the Republic of Haiti from the states of Louisiana and Texas. During numerous hurricane and other peace-time emergencies, I coordinated with military and civilian authorities the movement of hundreds of vehicles and personnel across the South East.

II. GENERAL MILLS OPERATIONS, INC.

General Mills, with headquarters in Minneapolis, Minnesota, today is a leading marketer of consumer foods products through its Big G Cereals, Betty Crocker, Yoplait, Gold Medal, and Food Service Divisions. General Mills is on the FORTUNE 500 with annual revenues of over \$5 billion and consistently ranks No. 1 in the food industry on

FORTUNE'S annual "Most Admired" corporate list. The Company is one of America's largest corporations, employing over 10,000 people, with plants, distribution centers, and offices located in almost every state. The company also has operations in Canada, Latin America, Europe, and Asia, making General Mills' products and services familiar to consumers worldwide. The company's roots, however, trace back more than a century to flour milling.

III. BUFFALO, NEW YORK

The Buffalo flour mill and cereal facility produce flour, bran, animal feed, breakfast cereal, and other wheat-based products. We employ over 500 people. Our customers are concentrated along the East Coast from Maine to Virginia, serving America's largest population centers (See Appendices A-C). We utilize two additional warehouse facilities located in the Buffalo suburbs to facilitate the just-in-time inventory and delivery of our product. These two warehouses are located in Cheektowaga (SW) and West Seneca (SO), and are operated by Sonwil Distribution, who employs over 100 people.

A. RAIL SERVICE

1. Past

In 1976, General Mills Buffalo handled over rail cars, over three times the volume we do now. Set rail fees were implemented based on origin and destination, and competition was intense. Therefore, choosing the best service available to us, we utilized the Norfolk Western Railroad (NW). General Mills was also able to route cars in and out of Buffalo by the Delaware Hudson (DH), the Buffalo Pittsburgh (BP), the Canadian National (CN), and Norfolk Southern (NS) railroads. At one time, 18 railroad sales offices were located in Buffalo, now there are none.

Buffalo used to be the largest flour milling city in the world. The General Mills flour mill in Buffalo is now only one of three remaining. The Buffalo flour mill and cereal facility used to run at maximum capacity, but now run at less than capacity due to competitive factors with other mills and facilities across North America.

At one time Buffalo also had a General Mills distribution center which turned over 18,000 cars in and out annually. This distribution center served the Northeast. As rail rates increased under Conrail, this Northeast distribution center has since been relocated to Harrisburg, Pennsylvania.

2. Present

General Mills is now serviced solely by Conrail. Annually, our facility turns over rail cars in and out. There are currently no other rail options available to us.

Our flour mill rail customer shipments consist of animal feed and bakery flour (See Appendix A). We shipped a total of _____ rail tons of product in FY 1996 at a cost of _____ cwt (cwt = hundred weight). This rail quantity is _____ of the total flour mill tonnage shipped, and yet only _____ of the total flour mill freight cost.

The flour mill shipped _____ truckloads, totaling _____ tons, at a total freight cost of _____ or _____. (See Appendix B). This truck tonnage is _____ of the total flour mill tonnage shipped, and yet _____ of the total flour mill freight cost.

The cereal facility does not ship finished product via rail anymore. In FY 1996, the cereal facility shipped by truck _____ tons of finished product at a freight cost of _____ (See Appendix C).

Buffalo has the highest ingredient cost of any General Mills facility across North America. Our inbound rail cars contain wheat, oats, and other ingredients. Ingredient cost is our highest cost of production, approximately
Approximately freight cost. The cereal facility brought in over 600 ingredient rail cars. Our flour mill brought in over
FY 1996 (See Appendix D). Mills in the Midwest bring their Canadian wheat across the border via Detroit. In Buffalo, wheat is the seventh largest inbound commodity.

B. MODES OF COMPETITION

1. Truck

Trucking is physically possible for us, but not economically advantageous. The competitiveness of trucks is dependent upon a variety of factors. These factors include distance, volumes, customer requirements, and market factors.

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Another key factor that determines the competitiveness of trucks with rail is the volume that is transported. On average, a rail car holds four times more volume than a truck. Thus, if a customer requires shipment in less than a full rail car, then, in all likelihood, product will be shipped via truck. Our bakery flour leased cars are our assets; therefore our asset utilization is also decreased in such a scenario.

In our animal feed market place, some products require movement by rail car for storage purposes. The truck can not be used by the receiver for storage. Most receivers use feed rail cars for storage until the feed is needed in the production process. Many customers lack permanent large scale storage facilities on-site.

2. Sea Vessels

General Mills Buffalo enjoys the geographic advantage of being located on Lake Erie, but for only the part of the year that the lake is not frozen. General Mills unloads over a dozen grain vessels annually that come from Duluth, Minnesota (See Appendix D). At one time, Conrail doubled the rail rate for unit trains of wheat inbound to Buffalo when the lakes were frozen, monopolizing the captive grain receivers of Buffalo.

IV. COMPETITIVE CONSIDERATIONS

The switch charge at Buffalo was \$466 per car as of March 19, 1997. Reasonable switch rates across the rest of North America range from \$130 to \$180. For this example, assume the national average is \$166, a difference of \$300 from \$466 in Buffalo. \$300 multiplied by _____ in potential annual freight savings.

Shared Assets Areas (SAA) are proposed to be implemented by CSX and NS as part of the proposed filing in major metro areas such as Detroit, Philadelphia, and

Southern New Jersey, despite the fact that Buffalo's rail volume is greater than that of Detroit's, and comparable to the Philadelphia and Southern New Jersey markets.

Although the flour mill ships rail, the rail freight cost is only . This cost saving of

between rail and truck is a result of our products heavy density and thus optimal application to rail shipment. The cereal facility could also benefit from rail rates low enough to make rail shipments again a viable option.

If rail rates were lowered and rail customer service improved through the implementation of a SAA, General Mills could again increase our flour mill and cereal facility to maximum capacity, which would add an estimated of run time per year. Since we average cars per day, this would mean an additional annually to be handled by the railroads. This increase would be beneficial to General Mills, the railroads, and other affected employers and employees of Western New York. At this time, General Mills has not made, and does not have plans, for any capital investments or capacity increases at either the flour mill or cereal facility, and is awaiting the outcome of this acquisition proceeding.

General Mills currently ships product by rail from the Midwest through Harrisburg to East Coast customers, rather than from Buffalo (which is significantly closer to the East Coast than Midwest locations such as Kansas City). This is due to the high rail cost of shipping from Buffalo, coupled with the fact that freight cost is the second highest cost of producing our product. Buffalo can not compete with other competitive shippers in other North American markets that can price with lower freight rates.

As the Transportation Planner, I negotiate, coordinate, and verify all truck and rail shipments entering and leaving three separate warehouse facilities. I manage a privately leased rail car fleet of 47 rail cars, while also utilizing railroad owned equipment. I utilize over 20 different truck carriers to move inbound and outbound bulk, less-than-truckload, local, and interstate freight.

I am a graduate of the University of Delaware with a Bachelor of Science Degree in Electrical Engineering. I am a certified member of the Delaware Professional Engineer Association. I entered the United States Army after completing my degree and the Reserve Officers Training Corps program as a Distinguished Military graduate.

As an Army officer, I attended the Unit Movement Officer Course, Armor Officer Basic Course, Signal Officer Branch Qualification Course, Scout Platoon Leader Course, Dismounted Armor Scout Course, Airborne School, and Air Assault School. I served in positions such as Battalion Logistics Officer, Executive Officer, and Platoon Leader. As part of Operation Uphold Democracy, I deployed and re-deployed by rail, road, sea and air over 700 pieces of rolling stock and containers to the Republic of Haiti from the states of Louisiana and Texas. During numerous hurricane and other peace-time emergencies, I coordinated with military and civilian authorities the movement of hundreds of vehicles and personnel across the South East.

II. GENERAL MILLS OPERATIONS, INC.

General Mills, with headquarters in Minneapolis, Minnesota, today is a leading marketer of consumer foods products through its Big G Cereals, Betty Crocker, Yoplait, Gold Medal, and Food Service Divisions. General Mills is on the FORTUNE 500 with annual revenues of over \$5 billion and consistently ranks No. 1 in the food industry on

FORTUNE'S annual "Most Admired" corporate list. The Company is one of America's largest corporations, employing over 10,000 people, with plants, distribution centers, and offices located in almost every state. The company also has operations in Canada, Latin America, Europe, and Asia, making General Mills' products and services familiar to consumers worldwide. The company's roots, however, trace back more than a century to flour milling.

III. BUFFALO, NEW YORK

The Buffalo flour mill and cereal facility produce flour, bran, animal feed, breakfast cereal, and other wheat-based products. We employ over 500 people. Our customers are concentrated along the East Coast from Maine to Virginia, serving America's largest population centers (See Appendices A-C). We utilize two additional warehouse facilities located in the Buffalo suburbs to facilitate the just-in-time inventory and delivery of our product. These two warehouses are located in Cheektowaga (SW) and West Seneca (SO), and are operated by Sonwil Distribution, who employs over 100 people.

A. RAIL SERVICE

1. Past

In 1976, General Mills Buffalo handled over rail cars, over three times the volume we do now. Set rail fees were implemented based on origin and destination, and competition was intense. Therefore, choosing the best service available to us, we utilized the Norfolk Western Railroad (NW). General Mills was also able to route cars in and out of Buffalo by the Delaware Hudson (DH) the Buffalo Pittsburgh (BP), the Canadian National (CN), and Norfolk Southern (NS) railroads. At one time, 18 railroad sales offices were located in Buffalo, now there are none.

Buffalo used to be the largest flour milling city in the world. The General Mills flour mill in Buffalo is now only one of three remaining. The Buffalo flour mill and cereal facility used to run at maximum capacity, but now run at less than capacity due to competitive factors with other mills and facilities across North America.

At one time Buffalo also had a General Mills distribution center which turned over 18,000 cars in and out annually. This distribution center served the Northeast. As rail rates increased under Conrail, this Northeast distribution center has since been relocated to Harrisburg, Pennsylvania.

2. Present

General Mills is now serviced solely by Conrail. Annually, our facility turns over rail cars in and out. There are currently no other rail options available to us.

Our flour mill rail customer shipments consist of animal feed and bakery flour (See Appendix A). We shipped a total of _____ rail tons of product in FY 1996 at a cost of _____ cwt (cwt = hundred weight). This rail quantity is _____ of the total flour mill tonnage shipped, and yet only _____ of the total flour mill freight cost.

The flour mill shipped _____ truckloads, totaling _____ tons, at a total freight cost of _____ or _____ (See Appendix B). This truck tonnage is _____ of the total flour mill tonnage shipped, and yet _____ of the total flour mill freight cost.

The cereal facility does not ship finished product via rail anymore. In FY 1996, the cereal facility shipped by truck _____ tons of finished product at a freight cost of _____ (See Appendix C).

Buffalo has the highest ingredient cost of any General Mills facility across North America. Our inbound rail cars contain wheat, oats, and other ingredients. Ingredient cost is our highest cost of production, approximately

Approximately freight cost. The cereal facility brought in over 600 ingredient rail cars. Our flour mill brought in over

FY 1996 (See Appendix D). Mills in the Midwest bring their Canadian wheat across the border via Detroit. In Buffalo, wheat is the seventh largest inbound commodity.

B. MODES OF COMPETITION

1. Truck

Trucking is physically possible for us, but not economically advantageous. The competitiveness of trucks is dependent upon a variety of factors. These factors include distance, volumes, customer requirements, and market factors.

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If rail rates were lowered and rail customer service improved through the implementation of a SAA, General Mills could again increase our flour mill and cereal facility to maximum capacity, which would add an estimated of run time per year. Since we average cars per day, this would mean an additional annually to be handled by the railroads. This increase would be beneficial to General Mills, the railroads, and other affected employers and employees of Western New York. At this time, General Mills has not made, and does not have plans, for any capital investments or capacity increases at either the flour mill or cereal facility, and is awaiting the outcome of this acquisition proceeding.

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Customer service under Conrail has been poor and would not be expected to improve if CSX became our sole provider of rail service, which is proposed to occur. Conrail has shut our mill down in the past due to missed service or errors. CSX would have little incentive to improve this poor level of service. With a Buffalo Shared Assets Area, I would have a choice between the CSX and NS. I would expect competition to bring an increased level of performance from both railroads.

General Mills Buffalo has the highest total utility operating cost of all its facilities in North America (See Appendix E). Western New York utilities will continue to have higher operating costs as the cost of transporting coal by rail increases. Coal is the highest single cost of producing power. At the flour mill, annual utility expenditures account for _____ The next closest mill is at _____ I feel this higher utility cost is attributable to the cost New York State Electric and Gas and Niagara Mohawk utility companies pay for coal rail shipments.

General Mills is also a member of the National Transportation League (NITL) and supports the NITL's goals and objectives in this proceeding in their entirety.

V. CONCLUSION

In Buffalo, the levels of rail cost and poor customer service, to ship ingredients, finished product, and coal to supply our energy needs, are higher than areas that enjoy rail competition.

If the acquisition is approved as proposed, the result will be detrimental to the General Mills Buffalo flour mill and cereal operations, as we could expect to experience additional competitive harm brought on by:

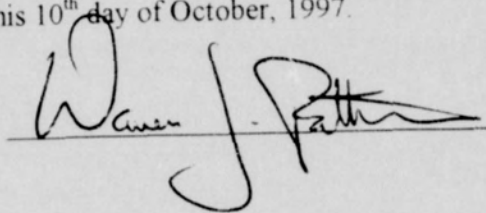
- (1) Increased rates due to CSX and NS attempting to reduce their acquired debt as a result of the acquisition;
- (2) Further decrease in production at the Buffalo facilities;
- (3) Possible loss in market share to facilities that obtain dual rail access as a result of the proposal;
- (4) Continued poor service due to *single* CSX service; and
- (5) Possible merger service problems as experienced by Union Pacific

General Mills requests two conditions that will bring lower rail costs and increase rail customer service:

- (1) The creation of a Niagara Frontier Shared Assets Area, as implemented in other major metro areas such as Detroit, Philadelphia, and Northern New Jersey, despite the fact that Buffalo's rail volume is greater than that of Detroit. This Shared Assets Area will provide real competitive rail service to Buffalo.
- (2) Reduction of reciprocal switching charges should be ordered to the reasonable level of \$130 per car, as the carriers adopted in the UP/SP merger.

By achieving these two goals, General Mills would remain competitive with other competing facilities across North America, and thus keep over 600 jobs here in Western New York.

I, Warren J. Patterson, declare under penalty of perjury that the foregoing is true and correct and that I am qualified and authorized to file this verified statement on behalf of General Mills. Executed on this 10th day of October, 1997.

A handwritten signature in black ink, appearing to read "Warren J. Patterson", is written over a horizontal line. The signature is stylized, with the first name "Warren" and last name "Patterson" clearly legible, and "J." in the middle.

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388

CSX CORPORATION AND CSX TRANSPORTATION, INC.,
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
CONTROL AND MERGER
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

VERIFIED STATEMENT OF JAMES H. BONNIE

I. INTRODUCTION

My name is James H. Bonnie. I am Manager, Fuel Procurement, Transportation and Contract Administration for Niagara Mohawk Power Corporation (hereinafter "NIMO"). I hold a Bachelor's degree in Engineering from the State University of New York at Buffalo and a Master's degree in Business Administration from Corpus Christi State University. I have been directly involved in the procurement and transportation of coal for NIMO during the past 17 years. Since January 1985, I have held my current position.

In my present position, I direct the planning and procurement of all fossil fuels (coal, oil, and natural gas) and related transportation services on the spot and contract market required by the Company's generating facilities to produce electricity, as well as, all other fuels used throughout NIMO's system (i.e., gasoline, diesel fuel, heating oil, aviation fuel).

The purpose of my Verified Statement in this proceeding in support of the conditions being sought by the Erie-Niagara Rail Steering Committee (hereinafter "ENRS"), of which NIMO is a member, is to discuss the impact of the proposed transaction upon NIMO's generation facilities in western New York. These generating facilities are the Dunkirk Steam Station (hereinafter "Dunkirk") in the

City of Dunkirk, New York and C.R. Huntley Station in the City of Tonawanda, New York (hereinafter "Huntley") (hereinafter Dunkirk and Huntley will collectively be referred to as the "Stations"). The Stations would both be competitively harmed by the proposed transaction unless the conditions proposed by ENRS are adopted by the Board. As discussed below, NIMO strongly supports ENRS in its effort to obtain the requested relief.

Because of the importance of the proposed transaction to NIMO, and because of the various competitive issues raised in the proposed acquisition and division of Conrail by CSX and Norfolk Southern, NIMO is also filing separate Comments and Request for Conditions concurrently with this filing. NIMO's filing contains my Verified Statement, as well as the Joint Verified Statement of Scott D. Leuthauser, who is Manager of Supply Planning in the Power Transmission and Planning Department of NIMO, and Michael J. Mathis, who is Manager of Generation Performance and Fuel Analysis in the Fossil and Hydro Generation Department of NIMO. That filing also contains the Verified Statement of G. W. Fauth III, who is our Transportation and Economic Consultant in this proceeding. In order to avoid duplication of presentations by these witnesses in this proceeding, I am incorporating by reference each of these verified statements from NIMO's separate filing into this statement on behalf of ENRS.

II. STATEMENT OF FACTS

A. GENERAL DESCRIPTION OF NIMO'S FACILITIES AND OPERATIONS

NIMO is an investor-owned utility providing electrical and gas service to communities in upstate New York. As a retail provider of electricity, NIMO is engaged in the generation (production), transmission and distribution of electricity in a service area of approximately 24,000 square miles, and serves 1,556,000

customers in 37 counties and 669 cities, towns and villages.¹ NIMO also generates electricity which is sold in the New York Power Pool on the wholesale market. With respect to its coal-fired facilities, NIMO currently burns approximately 3,000,000 tons of coal each year at the Stations. Coal transportation costs are about 35 percent of the total delivered cost of coal for the NIMO Stations.

B. DESCRIPTION OF THE HUNTLEY FACILITY, OPERATIONS, COAL SOURCES

Three miles downstream from the City of Buffalo, on the Niagara River, is Huntley, the largest of NIMO's two coal-fired power plants. Though some of the present buildings date back to 1916, when Huntley first began commercial service, the plant has been continuously modernized and now produces enough electricity to serve over 1,000,000 households (based on 500 kwhr average use per month per household).

As a result of continuous expansion, Huntley enjoyed the reputation of being the largest coal-fired plant in the world during World War II. The plant now houses four 100,000 kilowatt units in the north building (Units 63-66), the oldest installed in 1942, the newest in 1954; and two 200,000 kilowatt units in the south building, (Units 67 and 68), both installed in 1957-1958. Currently, the Station produces 715,000 kilowatts of 60 hertz power and feeds it into the vast New York State Power Pool to serve NIMO customers across the state.

Huntley employs approximately 300 people in many departments. Most supplies are purchased locally, further contributing to western New York's

¹ I note that, in addition to its coal-fired generating stations, NIMO also operates two fuel oil/natural gas fired stations, one in Albany and the other in Oswego, New York. In addition, as a distributor of natural gas, NIMO serves approximately 526,000 gas customers in a service area of about 4,500 square miles, comprised of 15 counties and 197 cities, town and villages. 1996 electric sales comprised 39,127 million kwhrs and revenues of \$3,308,999,000.

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Bituminous coal is currently burned at the Station from supply sources in the Pittsburgh seam in southwestern Pennsylvania and northern West Virginia. The Bailey mine is our primary loading point today, but coal has been sourced from Blacksville, Loveridge, Warwick, Mine #84, Shannon and Tanoma.

C. DESCRIPTION OF THE DUNKIRK FACILITY, OPERATIONS AND COAL SOURCES

Dunkirk is situated on a peninsula jutting out into the City of Dunkirk harbor on Lake Erie. The plant began operation in 1950 with two coal-fired units, each with a capacity of 100,000 kilowatts (Dunkirk Units 1 & 2). Two larger units of 200,000 kilowatts each were added in 1959 (Dunkirk Units 3 & 4). All four units, built by Combustion Engineering Corp., were designed to burn pulverized bituminous coal. Today, the Station produces 600,000 kilowatts of 60-cycle power, feeding it into a vast power pool serving NIMO customers across upstate New York.

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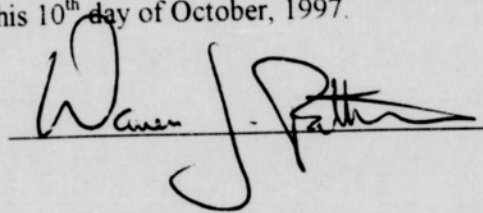
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Dunkirk has approximately 230 employees in various departments. Most supplies are purchased locally, further contributing to western New York's economy.

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III. DESCRIPTION OF NIMO'S CURRENT TRANSPORTATION SERVICE AND COMPETITIVE OPTIONS

A. RAIL

1. HUNTLEY

The Huntley facility is heavily dependent, almost exclusively dependent, upon rail service for its coal deliveries. In 1996, for example, the Huntley plant received a total of tons, all of which was delivered by rail and by Conrail as the carrier directly and exclusively serving the Huntley facility. In 1995, out of a total of tons, Conrail delivered tons, with the balance, tons being delivered by water vessel. In 1997 (January-October 7), the Huntley plant has received a total of tons, with tons being delivered by Conrail and the balance, 10,560 tons delivered by vessel. There have been no truck deliveries of coal to the Huntley facility during 1995, 1996 or 1997. In short, rail is clearly the dominant mode of transportation for Huntley's coal transportation needs and, since Conrail currently is the only carrier capable of providing direct service to the plant, Huntley is captive to it. The Applicants propose that CSX will step into the shoes of Conrail and thereby acquire this captive market.

2. DUNKIRK

The Dunkirk facility is also captive to rail service for a majority of its coal deliveries and to Conrail as the only railroad physically able to serve the facility. In 1996, Dunkirk received a total of tons, of which tons were delivered by Conrail, tons delivered by vessel and tons delivered by truck. In 1995, Dunkirk received a total of tons, of which tons were delivered by Conrail, tons delivered by vessel and tons delivered by truck. Thus far in 1997 (January-October 7), Dunkirk has received a total of

tons of coal with tons delivered by Conrail and tons delivered by vessel. There have been no truck deliveries of coal in 1997 and, as discussed more fully below, Dunkirk does not anticipate receiving any significant deliveries of coal by truck.

With respect to the vessel delivered tonnage at Dunkirk, while not insignificant, it is important to emphasize that the Dunkirk facility is captive to rail receipt of coal for the majority of its coal requirements. Stated differently, the availability of a vessel option with respect to delivery of coal to Dunkirk, while helpful to the limited extent available, does not provide effective competition to rail delivered coal for the majority of our coal needs. The Dunkirk facility, like the Huntley facility, is designed to receive coal primarily by rail and NIMO has invested in locomotives and related equipment to accomplish the necessary rail deliveries. Coal will and must continue to be received by rail at these facilities, regardless of the relatively limited alternative options available.

B. VESSEL/TRUCK

As earlier indicated, NIMO has, in the past, transhipped some of its coal by rail-water mode via Lake Erie port facilities during the lake shipping season to the Stations (primarily P&C dock in Conneaut, Ohio and rarely through Ashtabula Coal Storage and Transfer Terminal in Ashtabula Harbor, Ohio). NIMO's use of these terminal facilities is limited by the weather, vessel availability, ice conditions on the Niagara River, unpredictability of the shipping season (start/close) and, in connection with the rail-water movements to Huntley, constraints and costs associated with the Black Rock Lock (traffic delays, opening/closing dates, and vessel size restrictions), as discussed below.

Prior to installation of a new vessel dock, Dunkirk received virtually no vessel deliveries of coal from 1978 until November 1993. In late October 1993,

NIMO replaced its coal unloading dock facility at Dunkirk. Since that time, as earlier noted, NIMO has been able to bring in a limited portion of its coal tonnage by vessel. The balance is delivered by rail and rail will continue to be the dominant mode of transportation.

Huntley is also captive to rail, even though it can take a limited amount of coal by vessel. But there is an additional impediment for Huntley--the Black Rock Lock. Black Rock Lock is located where Lake Erie drains into the Niagara River near Huntley. The Black Rock Channel and Black Rock Lock provide a protected waterway for vessels around the fast current (estimated to be at least 17 knots) and rapids that exist near the mouth of the Niagara River. There is a height restriction on the Niagara River since the portion of the International Bridge over the Niagara River has not been opened in many years. Therefore, all boat coal destined for Huntley is forced to use the Black Rock Channel and Lock system.

The Black Rock Lock allows for vessels that have a length of 625 feet, a width of 68 feet and a depth over lock sills of 21.6 feet. This restricts the size of the vessel and the load of the vessel that can serve Huntley and other shippers north of Black Rock. In addition, the weather restricts and suspends movements, primarily in the winter. The Black Rock Lock is normally closed from the first of the year through mid-April. I recall one year when the lock was closed until early May because the ice on the Niagara River behind the boom backed up past the entrance into the Black Rock Channel south of the breakwall separating the channel from the river. For practical purposes, rail-vessel movements to Huntley are foreclosed to NIMO between early December and late April each year.

Huntley cannot receive all, or even most, of its coal requirements by vessel, primarily due to the closure of the Black Rock Lock. NIMO would need to store 720,000 tons of vessel-delivered coal by early December, assuming a four-month winter storage period from mid-December through mid-April. This is because the

coal burn at Huntley during that period averages about 6,000 tons per day. NIMO burn requirements are higher in the winter months than the rest of the year because of the winter energy demand peak. During December - March, Huntley and Dunkirk operate more like base-load units and are not taken off line with the same frequency as the rest of the year (and not with nearly the same frequency that they are during spring [April-June] and fall [September-November]). Also, hydro generation drops off in winter which increases the demand for fossil generation at the same time customer winter demand picks up.

NIMO used to move a considerable portion of its coal requirement to Huntley and Dunkirk by truck. NIMO's ability to move coal by truck to the Stations has always been limited by distance, proximity and convenient access to interstate highway, costs and availability of product that meets Station quality requirements. In my separate Verified Statement being submitted as part of the NIMO filing, I elaborate on the reasons why truck transportation is not currently a feasible transportation option for the Stations. That testimony is incorporated by reference herein.

In conclusion, NIMO is a captive rail shipper of coal to the Stations. Huntley is clearly in a rail captive situation (i.e. having no viable alternatives to rail transportation) given the unavailability of truck and very limited availability of vessel transportation. Dunkirk has a viable, but limited, water option, and therefore, must rely on rail shipments for the majority of its coal deliveries.

IV. COMPETITIVE IMPACT OF THE PROPOSED ACQUISITION AND DIVISION OF CONRAIL

NIMO is concerned about a number of harmful competitive effects of the Conrail acquisition, if the proposed transaction is approved by the Board (without conditions). These concerns include:

- NIMO and other shippers in the Erie, Niagara and northern Chautauqua area (hereinafter "Niagara Frontier") will face rate increases as CSX and NS attempt to recover the substantial, multi-billion dollar acquisition premium paid for Conrail.
- NIMO will be competitively disadvantaged *vis-a-vis* plants of competing utilities in the proposed "shared assets areas" (hereinafter "S/A/A") of Detroit and southern New Jersey/Pennsylvania areas.

Because of these serious concerns (among others that are set forth in my separate Verified Statement being submitted on behalf of NIMO), NIMO is participating as a member of the ENRS in order to address these concerns, among others, on a group basis by various interested parties in the Erie, Niagara and northern Chautauqua County area. I will elaborate, briefly, on the above-stated concerns as they pertain to NIMO.

A. PURCHASE PRICE/PREMIUM

As discussed above, both Huntley and Dunkirk are captive to rail for most of these deliveries i.e. there are no viable alternatives to rail transportation for most of the coal necessary for operation of the Stations. Consequently, NIMO will have limited viable transportation alternatives. Under the proposed transaction, NIMO's Stations will be sole-served by CSX. As discussed in the accompanying verified statement of G. W. Fauth, CSX and NS are paying a substantial premium for Conrail's assets. Therefore, NIMO, as a captive shipper, can expect rate increases to help pay for this premium. In short, given the large purchase price, NIMO, being a captive shipper, will certainly face increases as CSX and NS attempt to recover the very substantial acquisition premium paid for Conrail.

B. COMPETITIVE HARM FROM PROPOSED S/A/A UTILITY PLANTS

The Applicants have proposed the establishment of selected areas of competition. As indicated above, the Applicants have proposed S/A/A in the Detroit, Michigan area, the northern New Jersey area and the southern New Jersey/Philadelphia, Pennsylvania area. These proposed selected areas of competition will presumably result in lower transportation charges for railroad traffic from and to these areas. However, as a captive shipper, NIMO can expect rate increases in the future. While NIMO's freight rates likely will increase, several of its competitors may obtain rate reductions as a result of head-to-head competition created by the establishment of the proposed S/A/A's. A more detailed discussion of this negative competitive impact of the proposed acquisition is contained in the Joint Verified Statement of Messrs. Michael J. Mathis and Scott D. Leuthauser, referred to earlier in my testimony and incorporated by reference herein.

V. REQUESTED RELIEF FROM STB

As a member of ENRS and as an individual captive rail shipper on Conrail, NIMO requests the following conditions be imposed on the transaction by the STB:²

1. Niagara Frontier Shared Assets Area/Open Reciprocal Switching Condition at Reasonable Charges. NIMO strongly supports the conditions sought by ENRS for the very substantial reasons set forth in my statement and in the Comments and Requests for Conditions of ENRS. The shared assets approach would remedy the competitive harms that would otherwise be experienced by NIMO as a result of the proposed transaction.

2. Alternative Trackage Rights Condition. If, contrary to NIMO's hope and expectation, the Niagara Frontier Shared Asset Area Condition is not required by the Board in this proceeding, then NIMO supports the alternative trackage rights condition for the reasons indicated by ENRS. With respect to NIMO, approval of a

² NIMO is also seeking certain additional conditions in its separate filing in this proceeding.

Service from Niagara Falls is provided under both contract and common carrier tariffs. However, approximately of the volume is covered by a single line, Conrail master contract. The present proposal would split this contract 65% CSX and 35% NS. If present switch rates or "line haul factors" remain in place this will increase Olin's cost approximately on the NS portion or approximately annually. These products are extremely competitive and it will be impossible for Olin to pass this increased cost on to the customer. Delivered cost (product price plus freight) largely determines whether a sale is made.

Tank truck shipments of Chlorine are not a viable competitive option, due to the hazardous nature of the product, product stewardship and safety reasons. Caustic Soda is shipped by tank truck and Olin ships approximately loads annually. These are generally within a 250-mile radius of the plant since as a general rule truck is not competitive beyond this point. This is not to say that trucks are never used for long haul moves. However, longer hauls usually are explained by one of the following: (1.) The customer is unable to receive service by rail. (2.) The volume requirements is too small for rail (3.) The customer prefers service by bulk truck for just in time delivery inventory. (4.) Rail shipments may have been delayed or forces of nature have made other modes temporarily impractical.

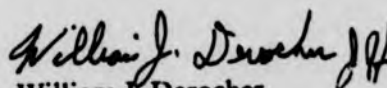
Under the present proposal Olin's Niagara Falls facility will be serviced by CSX only. Prior to 1976 the Niagara Junction, a local switch road, jointly owned by carriers in the area, served this plant. Since 1976 Conrail has served it with reciprocal switching with CSX and the CP (D&H prior to sale to CP). Without competitive access to other railroads Olin will have no control over the level of rates charged on rail shipments. As previously stated just the break out of Olin's Conrail master contract under the present proposal, will cost Olin approximately annually. Transportation costs represent approximately of the selling price of the products produced at Niagara Falls.

Olin competitors in numerous areas already enjoy dual rail service, which further jeopardized Olin's competitive position.

In summary, Olin's position for the Niagara Falls facility would call for dual access by both the CSX and Norfolk Southern Railroads. In the event this does not materialize, our fallback position would call for reciprocal switching.

I William J. Derocher declare under penalty of perjury that the foregoing is true and correct and that I am qualified and authorized to file this verified statement on behalf of Olin Chlor Alkali Products. Executed this 20th day of October 1997.

Sincerely,


William J. Derocher
Director Transportation
and Purchasing

October 15, 1997

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

CSX CORPORATION AND CSX TRANSPORTATION, INC.,
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
CONTROL AND OPERATING LEASES/AGREEMENTS
CONRAIL, INC. AND CONSOLIDATED RAIL CORPORATION

VERIFIED STATEMENT OF
MONTE P. RIEFLER

My name is Monte P. Riefler and I am currently the President of Riefler-Sheehan Group, L.L.C. and the Executive Vice President of Research and Development for Riefler Concrete Products LLC. From 1972 to 1997 I was the President of Paul Riefler, Inc., the leading producer of concrete products in upstate New York and a minority owner/operator of the Buffalo Southern Railroad. I am the holder of various rail related patents, concrete related patents and a pioneer in the introduction of non hazardous solid waste materials as aggregate substitutes in concrete products. I am currently working on some other developmental projects; Accumix Bulk Mortar; Sparlock, dry stacking masonry; Nova Brick, dry stacking brick; Ephesian Homes, masonry built row housing; CAFA (chemically activated fly ash) for high strength resistant precasting and masonry.

I would like to express certain concerns that Riefler Concrete Products LLC and Riefler-Sheehan Group, Inc. both have regarding the purchase and breakup of Conrail.

We have been charged excessively from Conrail for cement shipments vs. Canadian Pacific combined shipping and switching fees through Buffalo Southern Railroad. We would encourage the ECIDA to support additional competition in the Buffalo and Western New York market by allowing access to our market from the Canadian National Railroad, along with Norfolk Southern Railroad and the Canadian Pacific Railroad.

Turn around times bringing cement from Eastern New York cement mills to Hamburg, NY historically take an average of 20 days per car with Conrail vs. 10 days per car using Canadian Pacific.

We as shippers who depend heavily on rail shipments for raw materials for the manufacture of our specialty concrete products are extremely concerned should CSX replicate the former Conrail scenario allowing poor service and increased costs for rail service to this area.

Riefler Concrete Products LLC is presently the largest shipper on the Buffalo Southern Railroad and we are hopeful with the building of our proposed Nova brick and Sparlock block plants to increase our car loadings for calcite and white cement by an additional 175 car loadings per year by 1999. We are also working on the movement of aggregate from the

southern tier of Western NY by rail to both Buffalo and Hamburg which would increase the car loadings by 2000 cars per year for the Buffalo Southern Railroad. High switching costs and slow turn-around through the Buffalo switching yards has prohibited the movement of aggregate by rail. Movement by rail would eliminate 8,000 round trips using tractor trailers on Rt. 16 and Rt. 62 annually. Motorists usually prefer minimizing trucking on the highways vs. increasing traffic.

Calcite deposits that we need for manufacturing our new brick product are located in upper Quebec. We need Canadian National Railroad to be able to service Buffalo directly interchanging with the Buffalo Southern Railroad only. Delays in time increases our railcar leasing costs dramatically plus an additional CSX interchange prohibits the use of calcite for manufacturing.

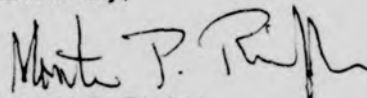
Our proposed dry stacking Nova brick would be shipped from Boston to Chicago and Thunder Bay to Louisville by both truck and rail as determined by transportation costs and service.

High switching costs and poor delivery schedules have stymied our growth and, I believe, many other manufacturers and distributors from Buffalo and Western NY as well. We request your diligence in resolving our local rail problem. As always we wish to thank you for your persistence in helping industry with our various problems here in Western NY.

If there is anything that we can do to help you define our problems with rail, please do not hesitate to contact either Mike or myself.

I, Monte P. Riefler, declare under penalty of perjury that the foregoing is true and correct and that I am qualified and authorized to file this verified statement. Executed this 15th day of October 1997.

Sincerely,



Monte P. Riefler
President Riefler-Sheehan Group, L.L.C.
Exec. V.P. Riefler Concrete Products LLC

cc: Lou Rossi, Consultant to Canadian National Railroad
Jim Sullivan, ECIDA
Bert Feasley & Kevin O'Gorman, BSRR
Chris Riefier & Dave Lichner, PRI

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 33388

**CSX CORPORATION AND CSX TRANSPORTATION INC.,
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
-CONTROL AND OPERATING LEASES/AGREEMENTS-
CONRAIL, INC. AND CONSOLIDATED RAIL CORPORATION**

**VERIFIED STATEMENT OF
KEVIN N. O'GORMAN, MD**

My name is Kevin N. O'Gorman, MD and I am C.E.O. of the Buffalo Southern Railroad, Inc. with offices located at 8600 Depot Street, Eden, New York 14057.

The Buffalo Southern Railroad strongly supports the Erie-Niagara Rail Steering Committee's efforts to gain open and equal access for all railroads into the Erie-Niagara Terminal Complex, from the Tifft-Seneca-Ohio Street Yards in the south to the Kenmore and Niagara Falls yards in the north, to ensure open and competitive rail rates to all manufacturers in this area.

The Buffalo Southern Railroad presently operates in three areas of Western New York, including Line 1242 a 32 mile track running from Buffalo Tifft Yard to Gowanda, New York. In addition we are the contracted operators for the rail yards at ConAgra-Mapleleaf Milling in Buffalo, New York and Dunlop Tire Corporation in Tonawanda, New York.

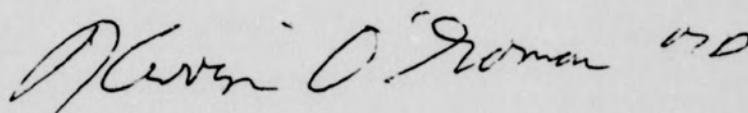
The proposed acquisition of Conrail by CSX Transportation and Norfolk Southern is unjust as it fails to break the monopoly of Conrail in the Buffalo-Niagara Falls area. This problem will only be magnified when other areas such as Detroit and New Jersey are granted open access under the proposed merger. The companies we are under contract to provide rail service (Dunlop Tire Corporation and ConAgra Mapleleaf Milling) have been severely stifled due to the lack of competitive rates into this yard. We urge you to grant the relief as requested by the Erie-Niagara Rail Steering Committee and mandate that as part of this merger the Buffalo-Niagara Falls Terminals and manufacturers are granted open access or that open terminal yards are created to serve all industries on an equal and competitive basis.

In addition we strongly urge that the Buffalo Southern Railroad's rights of access to all railroads under the terms of the old Erie Lackawanna-Penn Central merger be maintained. This would include our present direct access to the Canadian National Railway and CP Rail.

The STB has a duty to protect the interest of shippers located in Western New York. Once again, our Company strongly urges the Board to grant the relief requested by the Erie-Niagara Rail Steering Committee.

I, Kevin N. O'Gorman, declare under penalty of perjury that the foregoing is true and correct and that I am qualified and authorized to file this letter on behalf of the Buffalo Southern Railroad, Inc. Executed on this 15th day of October, 1997.

Sincerely,

A handwritten signature in dark ink, appearing to read "Kevin N. O'Gorman", followed by a small mark that looks like "MD". The signature is written in a cursive, flowing style.

Kevin N. O'Gorman, MD
C.E.O.
Buffalo Southern Railroad Inc.

PART C

LETTERS OF SUPPORT

JACK QUINN
30TH DISTRICT, NEW YORK

TRANSPORTATION AND
INFRASTRUCTURE

SUBCOMMITTEES:

SURFACE TRANSPORTATION
WATER RESOURCES AND ENVIRONMENT
RAILROADS

VETERANS' AFFAIRS

SUBCOMMITTEE CHAIRMAN:

BENEFITS



Congress of the United States

House of Representatives

Washington, D.C. 20515-3230

October 20, 1997

PLEASE RESPOND TO:

WASHINGTON OFFICE:

☐ 331 CANNON BUILDING
WASHINGTON, DC 20515
(202) 225-3306
FAX: 225-0347

MAIN OFFICE:

☐ 403 MAIN STREET
SUITE 240
BUFFALO, NY 14203-2199
(716) 845-5257
FAX: 847-0323

SATELLITE OFFICE:

☐ 1490 JEFFERSON AVENUE
BUFFALO, NY 14208
(716) 886-4076

Office of the Secretary
Case Control Party
Attn: STB Finance Docket No. 33388
Surface Transportation Board
1925 K Street
Washington, D.C. 20423-0001

To Whom it May Concern:

While the joint acquisition of control of Conrail by Norfolk Southern and CSX Corporation is pending before the Surface Transportation Board for approval, there is some concern over the effect that the merger will have among consumers in the affected area. We therefore would ask the Board to impose the following conditions, in order to prevent competitive harm that would otherwise occur to the Erie-Niagara area as a result of this proposed acquisition. Our proposed conditions will also help enhance competitive rail options available to businesses located in the Erie-Niagara area and will help to ensure that the transportation rates and charges to be assessed by CSX and Norfolk Southern in the future will be at reasonable levels.

We support the recommendations of the Erie-Niagara Rail Steering Committee and ask the Surface Transportation Board to impose these conditions. First, approval of the joint acquisition of control of Conrail by Norfolk Southern and CSX should be conditioned on the creation by applicants of another shared assets area ("Niagara Frontier Shared Assets Area") in addition to those already proposed to be created (Applicants propose to create shared assets areas in Northern New Jersey, Philadelphia/Southern New Jersey and Detroit.) By creating the Niagara Frontier Shared Assets Area, all current Conrail customers within the limits of the area would receive equal access to rail service from both CSX and NS.

Such rail service could be provided directly by either CSX or NS, or by the shared assets operator on behalf of either CSX or NS. The geographic limits of the Niagara Frontier Shared Assets Area should include all of Erie and Niagara counties and the northern portion of Chatauqua County in New York State. As in other proposed shared assets areas, Conrail, as the designated shared assets area operator, should retain ownership of all current Conrail lines, yards, facilities and other equipment and property currently located within those limits necessary to permit it to carry out its required functions as a shared assets operator. The operational aspects of shared assets would be identical to those proposed for the other areas, which would allow CSX and NS to make use of the shared assets area on an impartial basis, while preserving their

competitive identities. Adjustments would be made to the basic shared assets area structure as necessary to recognize specific operational requirements in the area for through train operations.

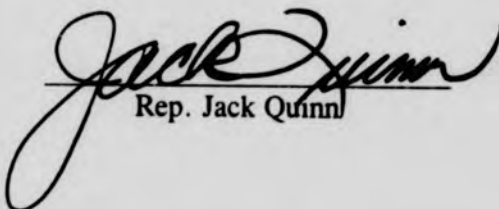
Approval of the acquisition should also be conditioned on the establishment within the Niagara Frontier Shared Assets Area of reciprocal switching arrangements for all current Conrail customers. This would allow other rail carriers serving the area, such as Canadian National, the Canadian Pacific Rail System, and existing short-line operators to also provide competitive service to current Conrail customers. Reciprocal switching services should be made available with a reasonable level of charges.

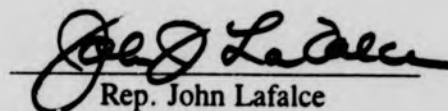
In the alternative, if a shared assets area is not created, approval of the joint acquisition of Conrail should be conditioned on the reciprocal grant of terminal trackage rights to each other by CSX and NS within the same geographic area described above. Ownership and operation of the Conrail assets in the area would be divided as proposed by the applicants. This would allow all customers currently served only by Conrail to receive rail service directly from both CSX and NS.

If neither of the above alternatives are established, approval of the joint acquisition of Conrail should be conditioned on the establishment by CSX and NS of reciprocal switching to all customers currently served only by Conrail. Reciprocal switching would be provided by CSX and NS separately on their portions of the Conrail assets allocated to each of them within the area described above. Service would be provided by CSX or NS, as the case may be, at reasonable charges for the account of all rail carriers which currently have access to the area who wish to provide service to customers located at points that would otherwise be served only by CSX or NS.

Imposition of the above conditions by the STB is necessary in order to prevent anticompetitive consequences to the Greater Buffalo area, and the businesses located therein, as a result of the CSX/Norfolk Southern proposal. It is our position, **and we would ask that this letter be submitted to the record**, that the Surface Transportation Board should exercise the broad conditioning power that it has in the public interest to enhance competition and to remedy the competitive harm that would otherwise occur as a result of the proposed transaction.

Very truly yours,


Rep. Jack Quinn


Rep. John Lafalce



NEW YORK STATE LEGISLATURE

October 9, 1997

Office of the Secretary
Case Control Branch
ATTN: STB Finance Docket No. 33388
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

Dear Chairman Morgan:

We, the undersigned members of the Western New York Delegation of the State Legislature, would ask the Surface Transportation Board to impose the conditions outlined below in connection with the party of record filing of the Erie-Niagara Rail Steering Committee. These conditions would prevent the competitive harm, which would otherwise occur in the Niagara Frontier region as a result of the acquisition, and division of Conrail as currently proposed by CSX and Norfolk Southern. As state elected representatives from the region we would ask the Surface Transportation Board to impose the following conditions:

Approval of the joint acquisition of Conrail by Norfolk Southern and CSX be conditioned on the creation by the applicants of a shared assets area ("Niagara Frontier Shared Assets Area") in addition to those already proposed to be created by the applicants. By creating the Niagara Frontier Shared Assets Area, all current Conrail customers within the limits of the area would receive equal access to rail service from both CSX and NS. Such rail service could be provided directly by either CSX or NS, or by a shared assets area operator. The geographic limits of the Niagara Frontier Shared Assets Area should include all of Erie and Niagara Counties and the northern portion of Chatauqua County in New York State.

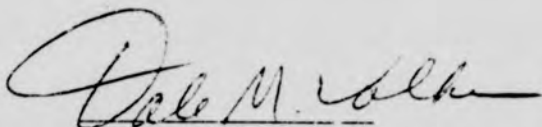
Approval of the acquisition should also be conditioned on the establishment within the Niagara Frontier Shared Assets Area of reciprocal switching arrangements for all current Conrail customers. Reciprocal switching services should be made available with a reasonable level of charges.

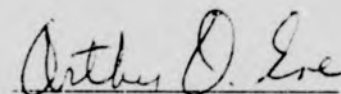
Imposition of the above conditions by the Surface Transportation Board is necessary in order to prevent anti-competitive consequences to the Niagara Frontier as a result of the CSX/Norfolk Southern proposal. CSX and Norfolk Southern are proposing to divide Conrail in a manner that will result in a majority of the shippers in the region having access to only a single rail carrier. At the same time the applicants have proposed shared asset areas in Detroit, Northern New Jersey, and South Jersey/Philadelphia. The businesses in the Niagara Frontier region compete on a regional, national and international level with the proposed shared asset areas. The result of the merger would be to competitively harm the Niagara Frontier by failing to inject the same level of competition in the Niagara Frontier as is proposed for the other shared asset areas.

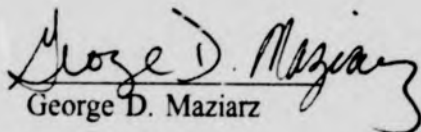
History has taught us of the importance of rail mergers and their impacts on our region's economy. The railroad bankruptcies in the late 70's and the promises of competitive rail service that Conrail were to bring to the Niagara Frontier, serve as sad reminders of the need to ensure our regions competitive place before these transactions are allowed to occur. This board now has the opportunity to finally bring the competition the USRA's final action plan called for to the Niagara Frontier region, instead of the legacy of monopolistic control, high rates, poor customer service and high switching fees which Conrail has left us.

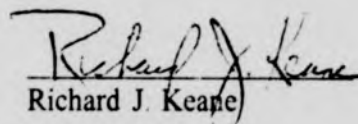
We would strongly urge the Surface Transportation Board to impose the conditions outlined above on CSX and Norfolk Southern's application in order to protect the shippers and the citizens of the Niagara Frontier from the competitive harm which their proposed actions would impose.

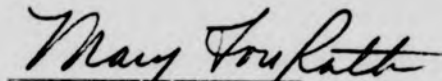
Very truly yours,

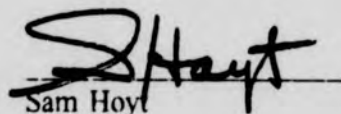

Dale M. Volker

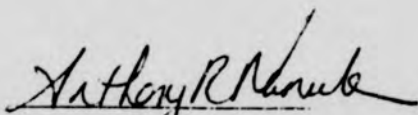

Arthur O. Eve

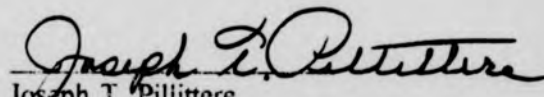

George D. Maziarz


Richard J. Keane


Mary Lou Rath


Sam Hoyt


Anthony R. Nanula


Joseph T. Pillittere

William T. Stachowski
William T. Stachowski

Richard A. Smith
Richard Smith

Robin L. Schimmgger
Robin L. Schimmgger

Thomas M. Reynolds
Thomas M. Reynolds

David E. Seaman
David E. Seaman

Paul A. Tokasz
Paul A. Tokasz

Richard R. Anderson
Richard R. Anderson

Sandra Lee Wirth
Sandra Lee Wirth



County of Erie

DENNIS T. GORSKI
COUNTY EXECUTIVE

October 14, 1997

PHONE: 716-858-8500

Surface Transportation Board
1925 K Street, NW
Washington, DC 20423

Re: **Finance Docket No. 33388, CSX Corporation and CSX Transportation, Inc.,**
Norfolk Southern Corporation and Norfolk Southern Railway Company -
Control and Operating Leases / Agreements - Conrail, Inc. and Consolidated Rail

Statement on behalf of the County of Erie

Honorable Board Members:

The County of Erie fully supports the Erie & Niagara Rail Steering Committee in its presentation before the Surface Transportation Board in this matter.

The future of manufacturing and agriculture in our region will be vitally affected by the joint CSX/NS proposal as filed before the federal Surface Transportation Board. If the proposal is adopted as presented, it is likely that our efforts to reinvigorate our essential manufacturing base will be thwarted for at least a generation. Literally thousands of jobs are at stake.

I strongly urge the Surface Transportation Board to insure that there is meaningful freight service competition on the Niagara Frontier, and have asked Stanley J. Keysa, the County's Deputy Commissioner for Planning and Economic Development, to prepare a more detailed verified statement.

Very truly yours,

DENNIS T. GORSKI
County Executive

DTG:RMT:sk

cc: Commissioner Tobe
Stanley J. Keysa, Esq.



CITY OF BUFFALO
OFFICE OF THE MAYOR

ANTHONY M. MASIELLO
MAYOR

October 16, 1997

Surface Transportation Board
1925 K Street, NW
Washington, D.C. 20423

RE: **Finance Docket No. 33388, CSX Corporation and CSX Transportation, Inc.,
Norfolk Southern Corporation and Norfolk Southern Railway Company -
Control and Operating Leases/Agreements - Conrail, Inc. and Consolidated Rail**

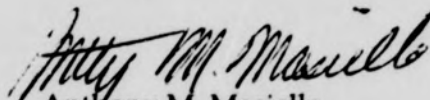
Honorable Board Members:

The City of Buffalo fully supports the Erie & Niagara Rail Steering Committee in its presentation before the Surface Transportation Board in this matter. Members of the committee have submitted detailed verified statements which address the potential adverse affects of the CSX/NS proposal.

The future of manufacturing and agriculture in our region will be vitally affected by the joint CSX/NS proposal as filed before the federal Surface Transportation Board. If the proposal is adopted as presented, it is likely that our efforts to reinvigorate our essential manufacturing base will be thwarted for at least a generation. Literally thousands of jobs are at stake.

I strongly urge the Surface Transportation Board to insure that there is meaningful freight service competition on the Niagara Frontier.

Sincerely,


Anthony M. Masiello
Mayor

STB

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competitive identities. Adjustments would be made to the basic shared assets area structure as necessary to recognize specific operational requirements in the area for through train operations.

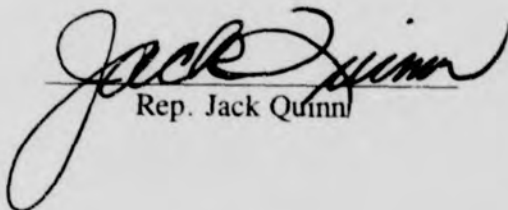
Approval of the acquisition should also be conditioned on the establishment within the Niagara Frontier Shared Assets Area of reciprocal switching arrangements for all current Conrail customers. This would allow other rail carriers serving the area, such as Canadian National, the Canadian Pacific Rail System, and existing short-line operators to also provide competitive service to current Conrail customers. Reciprocal switching services should be made available with a reasonable level of charges.

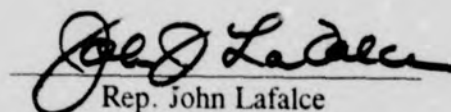
In the alternative, if a shared assets area is not created, approval of the joint acquisition of Conrail should be conditioned on the reciprocal grant of terminal trackage rights to each other by CSX and NS within the same geographic area described above. Ownership and operation of the Conrail assets in the area would be divided as proposed by the applicants. This would allow all customers currently served only by Conrail to receive rail service directly from both CSX and NS.

If neither of the above alternatives are established, approval of the joint acquisition of Conrail should be conditioned on the establishment by CSX and NS of reciprocal switching to all customers currently served only by Conrail. Reciprocal switching would be provided by CSX and NS separately on their portions of the Conrail assets allocated to each of them within the area described above. Service would be provided by CSX or NS, as the case may be, at reasonable charges for the account of all rail carriers which currently have access to the area who wish to provide service to customers located at points that would otherwise be served only by CSX or NS.

Imposition of the above conditions by the STB is necessary in order to prevent anticompetitive consequences to the Greater Buffalo area, and the businesses located therein, as a result of the CSX/Norfolk Southern proposal. It is our position, **and we would ask that this letter be submitted to the record**, that the Surface Transportation Board should exercise the broad conditioning power that it has in the public interest to enhance competition and to remedy the competitive harm that would otherwise occur as a result of the proposed transaction.

Very truly yours,


Rep. Jack Quinn


Rep. John Lafalce



NEW YORK STATE LEGISLATURE

October 9, 1997

Office of the Secretary
Case Control Branch
ATTN: STB Finance Docket No. 33388
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

Dear Chairman Morgan:

We, the undersigned members of the Western New York Delegation of the State Legislature, would ask the Surface Transportation Board to impose the conditions outlined below in connection with the party of record filing of the Erie-Niagara Rail Steering Committee. These conditions would prevent the competitive harm, which would otherwise occur in the Niagara Frontier region as a result of the acquisition, and division of Conrail as currently proposed by CSX and Norfolk Southern. As state elected representatives from the region we would ask the Surface Transportation Board to impose the following conditions:

Approval of the joint acquisition of Conrail by Norfolk Southern and CSX be conditioned on the creation by the applicants of a shared assets area ("Niagara Frontier Shared Assets Area") in addition to those already proposed to be created by the applicants. By creating the Niagara Frontier Shared Assets Area, all current Conrail customers within the limits of the area would receive equal access to rail service from both CSX and NS. Such rail service could be provided directly by either CSX or NS, or by a shared assets area operator. The geographic limits of the Niagara Frontier Shared Assets Area should include all of Erie and Niagara Counties and the northern portion of Chataqua County in New York State.

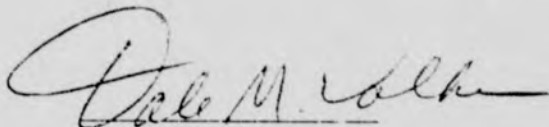
Approval of the acquisition should also be conditioned on the establishment within the Niagara Frontier Shared Assets Area of reciprocal switching arrangements for all current Conrail customers. Reciprocal switching services should be made available with a reasonable level of charges.

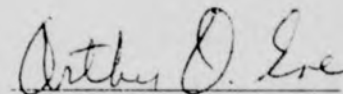
Imposition of the above conditions by the Surface Transportation Board is necessary in order to prevent anti-competitive consequences to the Niagara Frontier as a result of the CSX/Norfolk Southern proposal. CSX and Norfolk Southern are proposing to divide Conrail in a manner that will result in a majority of the shippers in the region having access to only a single rail carrier. At the same time the applicants have proposed shared asset areas in: Detroit, Northern New Jersey, and South Jersey/Philadelphia. The businesses in the Niagara Frontier region compete on a regional, national and international level with the proposed shared asset areas. The result of the merger would be to competitively harm the Niagara Frontier by failing to inject the same level of competition in the Niagara Frontier as is proposed for the other shared asset areas.

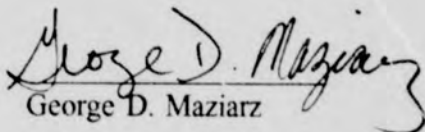
History has taught us of the importance of rail mergers and their impacts on our region's economy. The railroad bankruptcies in the late 70's and the promises of competitive rail service that Conrail were to bring to the Niagara Frontier, serve as sad reminders of the need to ensure our regions competitive place before these transactions are allowed to occur. This board now has the opportunity to finally bring the competition the USRA's final action plan called for to the Niagara Frontier region, instead of the legacy of monopolistic control, high rates, poor customer service and high switching fees which Conrail has left us.

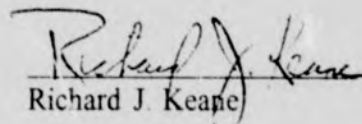
We would strongly urge the Surface Transportation Board to impose the conditions outlined above on CSX and Norfolk Southern's application in order to protect the shippers and the citizens of the Niagara Frontier from the competitive harm which their proposed actions would impose.

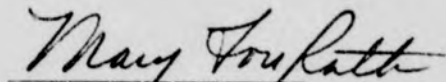
Very truly yours,

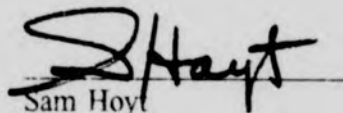

Dale M. Volker

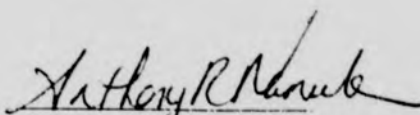

Arthur O. Eve

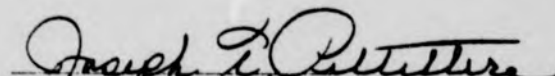

George D. Maziarz


Richard J. Keane


Mary Lou Rath


Sam Hoyt


Anthony R. Nanula


Joseph T. Pillittere

William T. Stachowski
William T. Stachowski

Richard A. Smith
Richard Smith

Robin L. Schimminger
Robin L. Schimminger

Paul A. Tokasz
Paul A. Tokasz

Thomas M. Reynolds
Thomas M. Reynolds

Richard R. Anderson
Richard R. Anderson

David E. Seaman
David E. Seaman

Sandra Lee Wirth
Sandra Lee Wirth



County of Erie

DENNIS T. GORSKI
COUNTY EXECUTIVE

October 14, 1997

PHONE: 716-858-8500

Surface Transportation Board
1925 K Street, NW
Washington, DC 20423

Re: **Finance Docket No. 33388, CSX Corporation and CSX Transportation, Inc.,**
Norfolk Southern Corporation and Norfolk Southern Railway Company -
Control and Operating Leases / Agreements - Conrail, Inc. and Consolidated Rail

Statement on behalf of the County of Erie

Honorable Board Members:

The County of Erie fully supports the Erie & Niagara Rail Steering Committee in its presentation before the Surface Transportation Board in this matter.

The future of manufacturing and agriculture in our region will be vitally affected by the joint CSX/NS proposal as filed before the federal Surface Transportation Board. If the proposal is adopted as presented, it is likely that our efforts to reinvigorate our essential manufacturing base will be thwarted for at least a generation. Literally thousands of jobs are at stake.

I strongly urge the Surface Transportation Board to insure that there is meaningful freight service competition on the Niagara Frontier, and have asked Stanley J. Keysa, the County's Deputy Commissioner for Planning and Economic Development, to prepare a more detailed verified statement.

Very truly yours,

DENNIS T. GORSKI
County Executive

DTG:RMT:sk

cc: Commissioner Tobe
Stanley J. Keysa, Esq.



CITY OF BUFFALO
OFFICE OF THE MAYOR

ANTHONY M. MASIELLO
MAYOR

October 16, 1997

Surface Transportation Board
1925 K Street, NW
Washington, D.C. 20423

RE: **Finance Docket No. 33388, CSX Corporation and CSX Transportation, Inc.,
Norfolk Southern Corporation and Norfolk Southern Railway Company -
Control and Operating Leases/Agreements - Conrail, Inc. and Consolidated Rail**

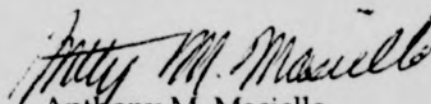
Honorable Board Members:

The City of Buffalo fully supports the Erie & Niagara Rail Steering Committee in its presentation before the Surface Transportation Board in this matter. Members of the committee have submitted detailed verified statements which address the potential adverse affects of the CSX/NS proposal.

The future of manufacturing and agriculture in our region will be vitally affected by the joint CSX/NS proposal as filed before the federal Surface Transportation Board. If the proposal is adopted as presented, it is likely that our efforts to reinvigorate our essential manufacturing base will be thwarted for at least a generation. Literally thousands of jobs are at stake.

I strongly urge the Surface Transportation Board to insure that there is meaningful freight service competition on the Niagara Frontier.

Sincerely,


Anthony M. Masiello
Mayor



City of Niagara Falls, New York

100 HONORABLE NIAGARA FALLS, NY 14303-0001

DEPARTMENT OF COMMUNITY DEVELOPMENT Division of Planning & Economic Development

October 14, 1997

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925K Street, N.W.
Washington, DC 20423-0001

RE: STB Finance Docket No. 33388, CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company Control and Operating Lease/Agreements - Conrail Inc. and Consolidated Rail Corporation

Dear Secretary Williams:

I am the Senior Planner for the City of Niagara Falls, New York. Niagara Falls is the largest city in Niagara County with a population of over 61,000 people. It is an international city with two international road bridges and two international railroad bridges crossing into Canada including Amtrak passenger service. Niagara Falls is also a city with a considerable number of major U.S. corporations, such as Occidental Petroleum, Nabisco, DuPont and Olin and most rely on rail service. The city's economic base is primarily industrial/manufacturing with nearly one third of total employment is in manufacturing.

However, while manufacturing is extremely important it has also exhibited contraction over the last 30 years. Total employment has shrunk by about 50% over that period from almost 16,000 to slightly more than 9,000. Niagara Falls cannot afford to see its remaining manufacturing employment threatened in any way. Rail service is, as you know, an important component necessary for the on-going profitability of operation here.

As you can guess, the purpose for this letter is to urge the Surface Transportation Board to support the position advanced by the Erie - Niagara Rail Steering Committee in the above proceeding and to do all it can to increase rail competition and improve rail transportation service in Western New York and, in particular, Niagara County.

-2-

The City has tried in the past to make better use of its rail importance and associated acreage, but has had very little success due to the monopolistic control of the area's rail by a single service provider that had no interest in expanding operations. Only in an environment where rail service becomes more competitive and market driven will this area's potential have a real chance to grow and create jobs.

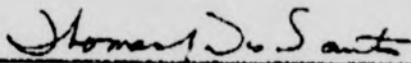
As it stands now, the proposed acquisition of Conrail by CSX and Norfolk Southern is in the short term unacceptable and in the long term, probably harmful to this area's established economic base.

Companies located in Erie, Niagara and Northern Chautauqua will be severely disadvantaged by the proposal to divide Conrail. Unless this is changed, as requested by the Erie-Niagara Rail Steering Committee, the STB should not approve the proposal. Companies in Western New York that will obtain access only to CSX or Norfolk Southern as a result of the transaction will not be able to compete effectively with companies that are reviewing access to more than one carrier in the locations of Detroit, Philadelphia, and Northern New Jersey.

Therefore, in order to ensure that local companies will not suffer competitive harm, the City supports the Erie-Niagara Rail Steering Committee in its request for a modification to the merger as proposed and requests that the Board grant this area the ability to obtain rail service from more than one rail carrier and as more fully described in the Steering Committee's statement.

Should additional information be required, contact me at (716) 286-4477.

Very truly yours,



Thomas J. DeSantis
Senior Planner
Planning and Development

TJD

cc: Anthony Restaino, City Administrator
Larry Krizan, Director of Community Development
Robert Merino, Corporation Counsel



NIAGARA FRONTIER TRANSPORTATION COMMITTEE

438 Main Street ♦ Buffalo, New York 14202
(716)-856-2026 ♦ FAX (716)-856-3203

October 10, 1997

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

Re: STB Finance Docket No. 33388, CSX Corporation and CSX Transportation, Inc., Norfolk Southern Railway Corporation - Control & Operating Leases / Agreements-Conrail, Inc. and Consolidated Rail Corporation

Dear Secretary Williams:

I, Richard T. Swist, am current chairman of the Niagara Frontier Transportation Planning and Steering Committee (NFTPCC), the Metropolitan Planning Organization for the Erie and Niagara counties region of Upstate New York. Our membership includes the City of Buffalo, the City of Niagara Falls, Erie County, Niagara County, the New York State Department of Transportation, the New York State Thruway Authority and the Niagara Frontier Transportation Authority.

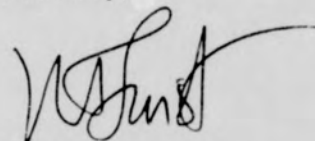
By unanimous vote of our Committee on 10/8/97, I have been directed to convey our strongest support for the positions being advanced by the Erie-Niagara Rail Steering Committee (ENRSC) in the above proceeding. The relief being requested is consistent with previous efforts by our own staff that early on identified, among other issues, unreasonable and noncompetitive transportation rates for regional shippers. Our efforts culminated in a formal resolution unanimously adopted by our Policy Committee on April 25, 1997 (see attached) and forwarded to Ms. Morgan on May 9, 1997. Extensive analyses conducted by the ENRSC and its consultants have subsequently quantified many of those issues and have better articulated the dire competitive consequences of tying our shippers to a one carrier / status quo system.

We urge you not to approve the division of Conrail as presently proposed by CSX and Norfolk Southern. The ENRSC has succinctly and thoroughly established that the plan as submitted will adversely impact shippers located in Erie, Niagara and northern Chautauqua counties by failing to provide competitive rail options, while such are being afforded to other areas (e.g. Philadelphia & Detroit) which compete directly with this market.

We affirmatively support the specific remedies being requested by the Erie-Niagara Rail Steering Committee as reasonable modifications to ensure that this area is not competitively harmed by the acquisition. The STB has within its powers a unique and unprecedented opportunity to redress past Conrail actions which have contributed to the economic resurgence of the rail freight industry but at times through near monopolistic practices. We respectfully request your support in conditioning the acquisition proposal with the specific relief changes sought by the ENRSC.

I, Richard T. Swist, declare under penalty of perjury that the foregoing is true and correct and that I am qualified and authorized to file this letter on behalf of the Niagara Frontier Transportation Planning and Steering Committee. Executed on this 10th day of October, 1997.

Sincerely,

A handwritten signature in dark ink, appearing to read 'R. Swist', with a long horizontal flourish extending to the right.

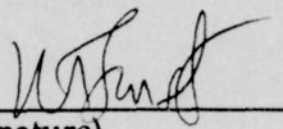
Richard T. Swist
NFTPCC Chairman

Attachments

tft

cc: NFTPCC Members

I RICHARD SWIFT, declare under penalty of perjury that the foregoing is true and correct and that I am qualified and authorized to file this verified statement on behalf of NETPCC. Executed on this 10 day of October, 1997.

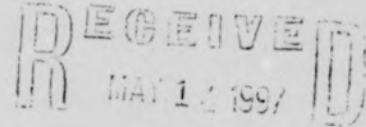

(signature)



NIAGARA FRONTIER TRANSPORTATION COMMITTEE

438 Main Street ♦ Buffalo, New York 14202
(716)-856-2026 ♦ FAX (716)-856-3203

May 9, 1997



Niagara Frontier
Transportation Committee

Ms. Linda Morgan, Chairwoman
Surface Transportation Board
12th Street & Constitution Ave., N.W.
Washington, D.C. 20423

Dear Ms. Morgan:

Attached please find a copy of Resolution 97-2 approved by the Niagara Frontier Transportation Committee (NFTC), the Metropolitan Planning Organization (MPO) for the Buffalo-Niagara Falls Urban Area.

This resolution, involving the Conrail merger, includes a "Conrail Merger Position Statement" which represents regional issues of concern for the Buffalo-Niagara Falls Urban Area. It is requested that these regional issues be considered before a ruling on the merger request is made.

Very truly yours,

Original Signed By:
ROBERT J. RUSSELL

ROBERT J. RUSSELL, P.E.
Secretary, NFTC

RJR/PEK/lls
Attach.

cc David Gantt, Chair, Assembly Committee on Transportation
J. A. Utermark, Freight & Economic Development Division, NYSDOT, 7A-302
D. J. Smith, Interim Staff Director, NFTC

RESOLUTION #97-6
NIAGARA FRONTIER TRANSPORTATION COMMITTEE

REGIONAL POSITION ON CONRAIL MERGER

WHEREAS, Consolidated Rail Corporation (Conrail) has agreed to a merger agreement with CSX Corporation and Norfolk Southern Corporation to reorganize railroad service in the Northeast, Mid-Atlantic, Southeast and Eastern Mid-West; and

WHEREAS, the merger could have a significant effect on the competitive balance of rail transportation, as well as on New York's state and local economies; and

WHEREAS, New York and local governments have made substantial financial investments in rail freight to ensure the continued viability of the rail freight industry; and

WHEREAS, all three railroads are Class I carriers which serve the Buffalo-Niagara Falls region; and

WHEREAS, the merger request between Conrail, CSX and Norfolk Southern must be considered by the U.S. Surface Transportation Board; and

WHEREAS, the Surface Transportation Board is receptive to regional issues of concern before ruling on the merger request; and

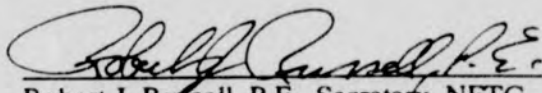
WHEREAS, the Surface Transportation Board can attach conditions and establish routes to protect rail competition in New York State and the Buffalo-Niagara-Falls region before approving the merger request; and

WHEREAS, the Niagara Frontier Transportation Committee (NFTC) is the designated Metropolitan Planning Organization (MPO) responsible for transportation planning in the Buffalo-Niagara-Falls region; and

WHEREAS, the members of the NFTC recognize the opportunity to enlighten the Surface Transportation Board of regional issues of concern;

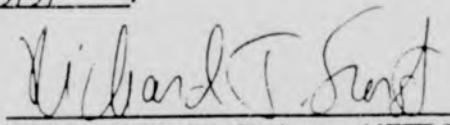
NOW THEREFORE BE IT RESOLVED, that the NFTC does hereby endorse the attached *Conrail Merger Position Statement* as representing regional issues of concern; and

BE IT FURTHER RESOLVED, that copies of this resolution be transmitted to the U.S. Surface Transportation Board, the NYSDOT Freight & Economic Development Division, and the NYS Assembly Standing Committee on Transportation.

BY: 
Robert J. Russell, P.E., Secretary, NFTC

Resolved this day, APR 25 1997

Recommended by the Niagara Frontier Transportation Planning and Coordinating Committee (NFTPCC) on 4/9/97.

BY: 
Richard T. Swist, Chairman, NFTPCC



Conrail Merger Position Statement

The NFTC believes that the commercial well-being of the area is best met by access to multiple forms of transportation, including rail, highway, air and water. To that end, the following issues are recommended as measures which would strengthen the viability of rail service which has had a major presence in the Buffalo-Niagara Falls region for 160 years.

- Separate ownership of the Conrail Buffalo-Selkirk-River Line route (the former NYC Water Level-West Shore routes) and the Southern Tier Line (former Erie railroad route between Jersey City and Buffalo).
- Competitive access to the Southeast via the NS connection at Hagerstown, MD, via Harrisburg, PA.
- Access by both railroads to the Port of New York and other North Atlantic ports.
- Competitive access to the Pennsylvania and West Virginia coal fields that supply local companies and regional utilities with coal.
- Protection of regional carriers such as the Buffalo & Pittsburgh RR by continued availability of "overhead" traffic.
- Competitive access west to Chicago and to northern Canadian markets, especially via Canadian Pacific and Canadian National Railroads.
- Independent terminal railroad providing interline switching from Lackawanna to Niagara Falls, including management of CP Draw and the Buffalo Belt Line, *or open access to all railroads at reasonable switch charges.*
- Crossover capabilities between the Hornell branch and Conrail mainline tracks east of Dick Road.
- Elimination of local barriers preventing one carrier from interchanging with any other carrier on a given route.
- Responsive and experienced personnel assigned to deal with maintenance, moving stock, marketing, invoicing, problem solving and customer relations.
- Cooperating in expediting reuse of numerous "brownfield" sites located both on and adjacent to railroad-owned properties.
- Responsive and priority treatment of Amtrak and other passenger carrier trackage rights and operational needs.

Italics: Added via amendment by NFTC vote on April 25, 1997.

FMC Corporation

Agricultural Products Group
100 Niagara Street
Middleport, New York 14105
716 735 3761
Cable Fmcacdiintl



October 8, 1997

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington DC 20423-0001

RE: STB Finance Docket No. 33388, CSX Corporation and CSX Transportation, Inc.
Norfolk Southern Corporation and Norfolk Southern Railway Company--Control
and Operating Leases/Agreements--Conrail Inc. and Consolidated Rail Corporation

Dear Secretary Williams:

I am writing to you on behalf of FMC Corporation, Agricultural Products Group, 100 Niagara Street, Middleport NY 14105, in my capacity as Manufacturing Manager at this facility.

FMC, Middleport NY strongly urges the Surface Transportation Board to grant the relief requested by the Erie-Niagara Rail Steering Committee, which will increase rail competition and improve rail transportation service in Erie, Niagara, and Northern Chautauqua counties.

FMC Corporation's facility at Middleport NY manufactures pesticides and herbicides for agricultural use. FMC ships and receives a total of approximately 100 railcar shipments per year from various locations. At the present time, we have access to one carrier: New Falls Railroad/Conrail.

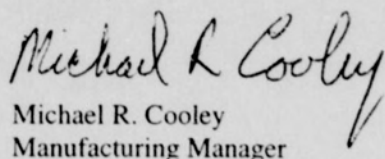
The proposal of CSX and Norfolk Southern to acquire Conrail will harm shippers dependent upon rail service in the greater Buffalo area and should not be approved as currently proposed. Although competitors in Detroit, Philadelphia, and northern New Jersey may have access to more than one carrier, shippers in the Western New York area, will only have access to a single rail carrier. The shippers in the Buffalo area will be subject to unreasonable and non-competitive rates for our transportation.

In order to alleviate this pending proposal and the potential skyrocketing transportation costs for the Western New York region, the Erie-Niagara Rail Steering Committee is proposing that the STB condition the merger to allow the greater Buffalo area companies to obtain rail service from more than one rail carrier. We fully support this effort.

The Honorable Vernon A. Williams
Page Two
October 8, 1997

I, Michael R. Cooley, declare under penalty of perjury that the foregoing is true and correct and that I am qualified and authorized to file this letter on behalf of FMC Corporation, Agricultural Products Group, 100 Niagara Street, Middleport NY 14105. Executed on this day of October 8, 1997.

Sincerely,


Michael R. Cooley
Manufacturing Manager

jac

Enclosure

Agway, Inc

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

October 10, 1997

RE: STB Finance Docket No. 33388, CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company- Control and Operating Leases/Agreements- Conrail Inc and Consolidated Rail Corporation

Dear Secretary Williams,

My name is Peter DelGobbo, Transportation Manager of Agway, Inc. of Syracuse, New York. Agway, Inc is the largest agricultural cooperative in the Northeast, with 80,000 farmer members in 13 states. Sales in 1996 exceeded 1.6 billion dollars. Agway, as with most agricultural companies, is very dependent on rail transportation. Agway receives and ships approximately 8,000 carloads per year to and from 30 facilities in the Northeast. Among these are two grain elevators in Western NY at Knowlesville and Gasport. Approximately 2.2 million bushels of corn, wheat, and soybeans are purchased from local farmers in the surrounding counties of Erie, Niagara, Orleans, Genesee and Monroe. Agway Knowlesville & Gasport are served by the newly formed "Falls Railroad" (FRR) which is a Conrail Express shortline operator connecting with Conrail at Lockport, NY. Approximately 500 carloads of grain are shipped per year, with the majority of sales to the large poultry accounts in the Delmarva Peninsula and in Southeastern PA, routed Conrail direct. Knowlesville & Gasport, through the FRR, will be served by the CSXT Railroad after the sale of Conrail, and Southeastern PA and the Delmarva Peninsula will be served by Norfolk Southern.

Mr. Williams as you are aware it is unrealistic to think we could compete in this market with two class one railroads in the route, which then gives the farmers of Western NY a limited market of New England, upstate NY and a few accounts in the Gettysburg area.

The purpose of this letter is to urge the Surface Transportation Board to grant the relief requested by the Erie-Niagara Rail Steering Committee, which will increase rail competition and improve rail transportation service in the counties of Erie, Niagara and Northern Chautaugua, New York.

The proposal of CSX and Norfolk Southern to acquire Conrail will harm shippers dependent on rail service in the greater Buffalo region and should not be approved as currently proposed. Shippers in this area will only have access to a single rail carrier, while their competitors in Detroit, Philadelphia and Northern New Jersey are proposed to obtain access to more than one carrier. Shippers in the greater Buffalo area will not obtain reasonable rates, while their competitors will.



EXCELLENCE THROUGH TEAMWORK

October 13, 1997

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K. Street, N.W.
Washington, D.C. 20423-0001

OCT 17 1997

Re: STB Finance Docket No. 93388, CSX Corporation and CSX Transportation, Inc.
Norfolk Southern Corporation and Norfolk Southern Railway Company - Control
and Operating Leases/Agreements - Conrail Inc. and Consolidated Rail Corporation

Dear Secretary Williams:

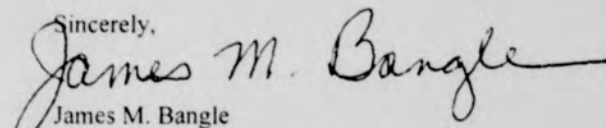
I am the Transportation Manager at Dunlop Tire Corporation located in Amherst, New York. I am writing this letter on behalf of Dunlop Tire Corporation to request the Surface Transportation Board to award the remedies sought by the Erie-Niagara Rail Steering Committee which will allow businesses in the greater Buffalo region to obtain competitive rail service.

Dunlop Tire ships tires via rail from our Tonawanda, New York plant to: Shelby, OH, Pottstown, PA, N. Kansas City, MO and Ontario, CA. We receive various raw materials via rail into our Tonawanda, NY plant from multiple locations. The proposal of CSX and Norfolk Southern to acquire Conrail will harm shippers dependent upon rail service in the greater Buffalo region and should not be approved as currently proposed. Shippers in this area will only have access to a single rail carrier, particularly for switching, while their competitors in Detroit, Philadelphia and Northern New Jersey are proposed to obtain access to more than one carrier. Shippers in the greater Buffalo area will not obtain reasonable and competitive transportation rates, while their competitors will. The excessive switching charges that result from having a single rail carrier should warrant joint switching by both the CSX and Norfolk Southern or an independent party to provide switching.

In order to alleviate the harm that would result to the Erie-Niagara region, the Erie-Niagara Rail Steering Committee is proposing that the STB condition the merger proposal to allow companies located in Western New York to obtain rail service from more than one rail carrier. We affirmatively support this effort.

We look forward to your favored ruling supporting competitive rail service in the counties of Erie, Niagara and Northern Chautauqua.

Sincerely,


James M. Bangle
Transportation Manager
Dunlop Tire Corporation

cc: W. Smith - Dunlop Tire Corp.
D. Courtney - Dunlop Tire Corp.

VIA FASCIMILE # (716) 856-6754

October 17, 1997

Dr. Ronald Coan, Executive Director
Erie County Industrial Development Agency
Liberty Building
424 Main Street, Suite 300
Buffalo, New York 14202

Dear Dr. Coan:

Enclosed is a copy of Antonio G. Orbegoso's comments for Occidental Chemical Corporation in Finance Docket No. 33388. Since OxyChem is a party of record and has submitted a direct response to the Board, I do not believe it would be proper for me to submit another verified statement to the Board for inclusion in your filing.

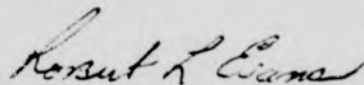
We strongly agree with the efforts of the Erie-Niagara Rail Steering Committee (ENRS) to secure competitive rail-to-rail alternatives for the Niagara Falls area.

Before CSX Transportation pulled out of the Niagara Falls area, I believe in 1996, and Conrail canceled the reciprocal switching charge with CSX at Niagara Falls, we had some competitive rail competition between major Class I carriers. It's time for the STB to restore rail competition for Niagara Falls, NY. Niagara Falls is only 27 rail miles from Buffalo. The STB could order that CSX provide a reasonable charge from Niagara Falls to Buffalo to be absorbed by NS, CN, CPRS, and BPRR in their pricing. Those carriers should show as serving Niagara Falls under reciprocal switching arrangement so direct contracts can be negotiated with them without CSX concurrence, which would restrict pricing freedom. Another alternative would be trackage rights between Buffalo and Niagara Falls for NS or others.

If you can use our expressions of strong support for ENRS in some manner in your filing, please do so.

We appreciate your efforts on behalf of Occidental and other area shippers.

Sincerely,



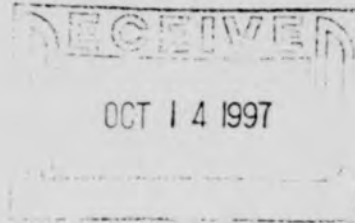
Robert L. Evans
Corporate Manager Rail Transportation

RLE/mrl

enclosures



Occidental Chemical Corporation
Corporate Office
Occidental Tower, 5005 LBJ Freeway
P.O. Box 809050, Dallas, TX 75380-9050
972/404-3800



CLIFFSTAR CORPORATION • ONE CLIFFSTAR AVENUE • DUNKIRK, NEW YORK 14048

October 10, 1997

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: STB Finance Docket No. 33388, CSX Corporation and CSX Transportation, Inc.,
Norfolk Southern Corporation and Norfolk Southern Railway Company--Control
and Operating Leases/Agreements--Conrail Inc. And Consolidated Rail
Corporation

Dear Secretary Williams:

My name is James S. Koch and I am Chief Executive Officer for the Cliffstar Corporation
located in Dunkirk, New York.

The purpose of this letter is to urge the Surface Transportation Board to grant the relief requested
by the Erie-Niagara Rail Steering Committee, which will increase rail competition and improve
rail transportation service in the counties of Erie, Niagara and Northern Chautauqua.

Cliffstar Corporation's primary business is the processing of fruits to manufacture and bottle fruit
juice and drinks for the major chain stores, wholesalers and mass merchandising stores in the
United States. Cliffstar receives over railcars of prunes and white grape juice from
California per year. In addition, high fructose corn syrup accounts for rail tanker cars at the
Dunkirk location. Combined Cliffstar is depending on over railcars per year of incoming
supplies to support its business activities delivered solely through Conrail. Our industry is in the
highly competitive Private Label food business, where low cost and excellent service are
imperative for survival.

The proposal of CSX and Norfolk Southern to acquire Conrail will harm shippers dependent
upon rail service in the Northern Chautauqua region and should not be approved as currently
proposed. Shippers in this area will only have access to a single rail carrier, while their
competitors in Detroit, Philadelphia and Northern New Jersey are proposed to obtain access to
more than one carrier. Shippers in Northern Chautauqua Country will not obtain reasonable and
competitive transportation rates, while their competitors will.

CLIFFSTAR CORPORATION

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board

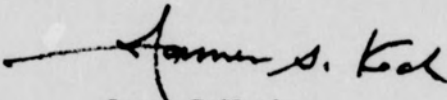
Page 2

We believe that in order to prevent serious harm to companies located in the Erie-Niagara and Northern Chautauqua area, the STB should adopt the proposals of the Erie-Niagara Rail Steering Committee.

I, James S. Koch, declare under penalty of perjury that the foregoing is true and correct and that I am qualified and authorized to file this letter on behalf of the Cliffstar Corporation. Executed on this 10th day of October, 1997.

Sincerely,

CLIFFSTAR CORPORATION

A handwritten signature in black ink, appearing to read "James S. Koch", with a long horizontal line extending to the left.

James S. Koch
Chief Executive Officer

JSK/vp



100 Sonwil Drive,
Buffalo, New York
14225

716 684-0555
Fax 684-6996

October 14, 1997

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street N.W.
Washington, D.C. 20423-0001

RE: STB Finance Docket No.#33388, CSX Corporation and CSX Transportation, Inc.
Norfolk Southern Corporation and Norfolk Southern Railway Company- Control and
Operating Leases/Agreements-Conrail Inc. and Consolidated Rail Corporation.

Dear Secretary Williams:

This letter serves to express Sonwil Distribution Centers support for conditions being
sought by the Erie Niagara Rail Steering Committee in the Conrail merger proceeding.

My name is Raymond J. Stoos and I am Vice President Sales for Sonwil Distribution
Center Inc. With headquarters at 100 Sonwil Road, Buffalo, New York. We are a public
warehouse operation with two (2) rail served facilities, one at 100 Sonwil Road, Buffalo,
New York and one at 4900 North America Drive, West Seneca, New York. We currently
handle in excess of 700 to 800 rail carloads per year from various West coast and
Midwestern shipping points.

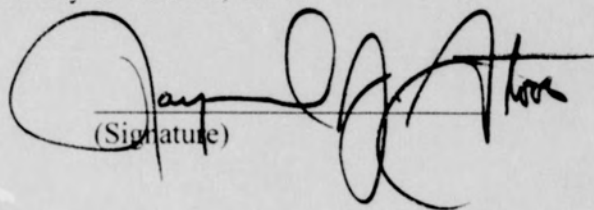
Under the current CSX and NS division of Conrail, our Buffalo facility would be served
by CSX and our West Seneca facility served by NS. Our Buffalo operation would be
open to reciprocal switching however, our West Seneca operation is located just outside
the Buffalo switch limits and would be totally captive to the NS. The current switching
limits are from a age long past and should be revised to include West Seneca so that this
area is open to both CSX and NS.

The proposal of CSX and Norfolk Southern to acquire Conrail will harm companies
dependent upon rail service in the greater Buffalo region and should not be approved as
currently proposed. Rail users in this area should be given the same access to rail carriers
as is being provided for competitors in Detroit, Philadelphia and Northern New Jersey.
Companies in greater Buffalo will not obtain reasonable and competitive transportation
rates, while their competitors will.

We believe that in order to prevent serious harm to companies located in the Erie-Niagara area, the STB should adopt the proposals of the Erie-Niagara Rail Steering Committee.

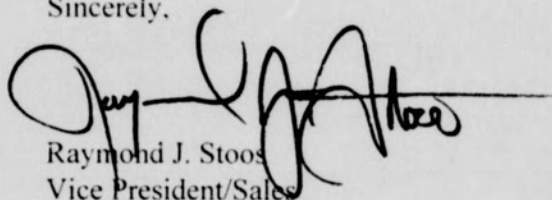
In summary, competitive access with a reasonable switching area and charges, should not be denied to the Western New York industries.

I Raymond J. Stoos, declare under penalty of perjury that the foregoing is true and correct and that I am qualified and authorized to file this verified statement on behalf of Sonwil Distribution Center, Inc. Executed on this 14th day of October, 1997.



(Signature)

Sincerely,



Raymond J. Stoos
Vice President/Sales
Sonwil Distribution Center, Inc.



Gateway Industrial Park
Gateway Metroport
Gateway Executive Park
Gateway Foreign Trade Zone

GATEWAY TRADE CENTER, INC.

2544 Clinton Street, P.O. Box 880, Buffalo, New York 14224

(716) 826-2890

FAX # (716) 826-1342

October 13, 1997

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

Re: STB Finance Docket No. 33388, CSX Corporation & CSX Transportation, Inc., Norfolk Southern Corporation & Norfolk Southern Railway Company - Control & Operating Leases/Agreements - Conrail Inc. & Consolidated Rail Corporation.

Dear Secretary Williams:

My name is Fred W. Finger, Port Director for Gateway Metroport, located in the Buffalo, New York area.

We are writing to request the Surface Transportation Board to award the remedies sought by the Erie-Niagara Rail Steering Committee which will allow businesses in the greater Buffalo region to obtain competitive rail service.

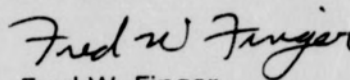
The Gateway Metroport has the ability to provide rail service to both ocean and lake operating ships at our port. This gives us the infrastructure to be competitive with all other ports on the Great Lakes.

Companies located in Erie, Niagara and Northern Chautauqua will be severely disadvantaged by the proposal to divide Conrail. Unless this is changed, as requested by the Erie-Niagara Rail Steering Committee, the STB should not approve the proposal. Companies in Western New York that will obtain access only to CSX or Norfolk Southern as a result of the transaction, will not be able to compete effectively with companies that are receiving access to more than one carrier in the locations of Detroit, Philadelphia, and Northern New Jersey.

In order to alleviate the harm that would result to the Erie-Niagara region, the Erie-Niagara Rail Steering Committee is proposing that the STB condition the merger proposal to allow companies located in Western New York to obtain rail service from more than one rail carrier. We affirmatively support this effort.

I, Fred W. Finger, declare under penalty of perjury that the foregoing is true and correct and that I am qualified and authorized to file this letter on behalf of Gateway Metroport. Executed on this 13th day of October, 1997.

Sincerely,

A handwritten signature in cursive script that reads "Fred W. Finger".

Fred W. Finger
Port Director

FWF:ed

OCT 16 1997



The Carbide/Graphite Group, Inc.

4861 Packard Road
Niagara Falls, NY 14304-1594

(716) 285-9381

10/08/97

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: STB Finance Docket No. 33388, CSX Corporation and CSX Transportation, Inc.,
Norfolk Southern Corporation and Norfolk Southern Railway Company-Control and Operating
Leases/Agreements-Conrail Inc. and Consolidated Rail Corporation.

Dear Secretary Williams:

My name is William Foote, Manufacturing Services Manager at Carbide/Graphite Group, Inc. of
Niagara Falls, NY and on behalf of my company would like to state our support for the local
efforts of the Erie-Niagara Rail Steering Committee in seeking competitive rail service for the
businesses of Western NY due to the pending Conrail acquisition proceedings.

Our business is related to the global steel industry to whom we supply graphite electric arc
furnace electrodes for the melting of steel scrap. Because of our diverse shipment locations
around the world, we currently ship by truck from our Niagara Falls plant and by rail and sea at
dockages outside our plant. We receive a portion of our raw materials by rail carrier which is
Conrail.

As I understand it, our rail costs will increase with the breakup of Conrail due to Norfolk
Southern's control of the Buffalo NY hub and CSX's control of all other Western NY rail lines
leading in and out of Buffalo which will result in additional switching charges for all railcar traffic.
Depending on the increased costs for our rail service, hauling by truck may become more viable
but in any case will increase our costs of doing business which we cannot pass along to our
customers.

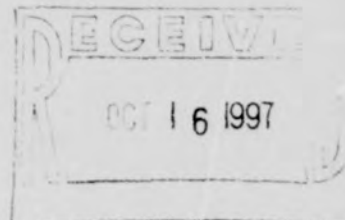
We urge the Board to seriously consider the proposals requested by the Erie-Niagara Rail
Steering Committee.

Sincerely,
A handwritten signature in cursive script that reads 'William Foote'.
William Foote
Mgr. Mfg. Services

cc: S. Foster, C/G Corporate Office
C/G NF Purchasing File

Lackawanna Products Corp.

8880 SHERIDAN DRIVE
CLARENCE, N.Y. 14031-1498
(716) 633-1940
FAX: (716) 633-1490



October 15, 1997

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street NW
Washington, DC 20423-0001

RE: STB Finance Docket Number 33388
CSX Corporation and CSX Transportation Inc., Norfolk
Southern Corporation and Norfolk Southern Railway Company
Control and Operation Leases/Agreements - Conrail Inc and
Consolidated Rail Corporation

Dear Secretary Williams,

My name is Scott A. Schultz, and I am Rail Operations Manager with Lackawanna Products Corporation in Clarence, New York.

My company is writing to provide strong support for the efforts of the Erie Niagara Rail Steering Committee in the Conrail acquisition proceedings and to urge the Surface Transportation board to grant the relief requested by the Erie Niagara Rail Steering Committee, which will increase rail competition and improve rail transportation service in the New York State counties of Erie, Niagara and Northern Chautauqua.

Lackawanna Products Corporation was founded in 1982 and is a Trading Company specializing in Feed Ingredients and Food Products.

Headquartered in Clarence, New York, Lackawanna Products has a team of 17 merchandisers diversified in the marketing of commodities domestically as well as International. Supported by a staff of 27 transportation and administrative personnel, Lackawanna Products is experienced in the transportation and documentation for the placement of commodities world wide.

Page 2
October 15, 1997

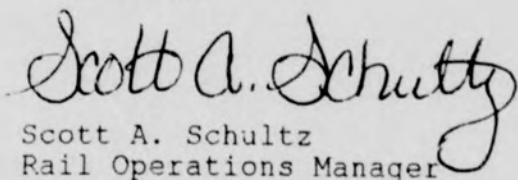
Lackawanna Products owns and operates a transfer facility in Eden, New York that is serviced by the Buffalo Southern Railroad which has access to the Buffalo and Pittsburgh Railroad, Canadian National, Consolidated Rail, CSX Transportation, Canadian Pacific, Norfolk Southern and New York and Lake Erie Railroads. We also maintain additional warehousing in the U.S. and Canada to facilitate the movement of an estimated one million tons of commodities trade each year to an established network of and estimated 2100 customers.

We feel that the proposal acquisition of Conrail by CSX and Norfolk Southern is inadequate and that the division of Conrail as proposed by Norfolk Southern and CSX should not be approved by the Board. The existing proposal will adversely impact shipper in Erie, Niagara and North Chautauqua Counties because it fails to provide competitive rail service in this area while providing rail competition to other locations that compete with shippers in Erie, Niagara and Chautauqua counties. Unless this is changed, as requested by The Erie Niagara Rail Steering Committee.

In closing, I would like to say that the STB has a duty to protect the interest of shippers located in Western New York. Our Company strongly urges the Board to grant the relief requested by the Erie Niagara Rail Steering Committee. On behalf of shipper in the greater Buffalo area, the Erie Niagara Rail Steering Committee is requesting the board to modify the merger in order to ensure that shippers in the area will not suffer competitive harm. We strongly agree with their position and request the Board grant relief.

I, Scott A. Schultz, declare under penalty of perjury that the foregoing is true and correct and that I am qualified and authorized to file this letter on behalf of Lackawanna Products Corporation. Executed on this 15th day of October, 1997.

Sincerely,


Scott A. Schultz
Rail Operations Manager



BUFFALO CRUSHED STONE, INC.
CONSTRUCTION MATERIALS

2544 Clinton St., P.O. Box 710, Buffalo, NY 14224
(716) 826-7310 Fax: (716) 826-1342

October 13, 1997

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N. W.
Washington, DC 20423-0001

Re: STB Finance Docket No. 33388, CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation & Norfolk Southern Railway Company, Control & Operating Leases/Agreements - Conrail Inc. & Consolidated Rail Corporation.

Dear Secretary Williams:

My name is Joseph Laraiso, Executive Vice President of Buffalo Crushed Stone, Inc., which has several operations of mining for crushed stone, sand and gravel, located in the Western New York area.

The purpose of this letter is to urge the Surface Transportation Board to grant the relief requested by the Erie-Niagara Rail Steering Committee, which will increase rail competition and improve rail transportation service in the counties of Erie, Niagara and Northern Chautauqua.

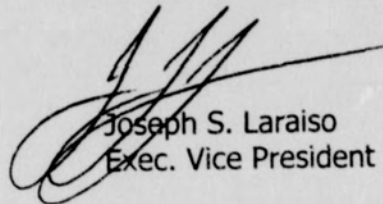
Our company can ship crushed stone from our local quarry to many adjacent states of New York and even beyond. We now have, and with the Conrail split will continue to have, only access to one class, one railroad.

The division of Conrail as proposed by Norfolk Southern and CSX, should not be approved by the Board. The existing proposal will adversely impact shippers located in Erie, Niagara and North Chautauqua counties because it fails to provide competitive rail service in this area, while providing rail competition to other locations that compete with shippers in Erie, Niagara and Chautauqua.

The STB has a duty to protect the interest of shippers located in Western New York. Our company strongly urges the Board to grant the relief requested by the Erie-Niagara Rail Steering Committee.

I, Joseph S. Laraiso, declare under penalty of perjury that the foregoing is true and correct and that I am qualified and authorized to file this letter on behalf of Buffalo Crushed Stone, Inc. Executed on this 13th day of October, 1997.

Sincerely,



Joseph S. Laraiso
Exec. Vice President



THE RED WING COMPANY, INC.

Quality
Corporate
Brand
Foods
Since 1912

October 10, 1997

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

Re: STB Finance Docket No. 33388, CSX Corporation and CSX Transportation, Inc.
Norfolk Southern Corporation and Norfolk Southern Railway Company - Control
and Operating Leases/Agreements - Conrail Inc. and Consolidated Rail Corporation.

Dear Secretary Williams:

I, Eugene W. Bailen, am President of The Red Wing Company, Inc. in Fredonia, New York. Red Wing employs over 600 people in Chautauqua County.

I am writing to urge the Surface Transportation Board to grant the relief requested by the Erie-Niagara Rail Steering Committee, which will increase rail competition and improve rail transportation service in the counties of Erie, Niagara and Northern Chautauqua.

We are a producer of food products for the retail grocery industry. My company ships raw materials and finished goods to and from the West Coast frequently as well as receiving corn sweeteners and soy oil from the Midwest. We are connected to the Conrail system in Western New York.

The division of Conrail as proposed by Norfolk Southern and CSX should not be approved by the Board. The existing proposal will adversely impact shippers located in Erie, Niagara and North Chautauqua counties because it fails to provide competitive rail service in this area while providing rail competition to other locations that compete with shippers in Erie, Niagara and Chautauqua.

In order to alleviate the harm that would result to the Erie-Niagara and Northern Chautauqua region, the Erie-Niagara Rail Steering Committee is proposing that the STB condition the merger proposal to allow companies located in Western New York to obtain rail service from more than one rail carrier. We affirmatively support this effort.

I, Eugene W. Bailen, declare under penalty of perjury that the foregoing is true and correct and that I am qualified and authorized to file this letter on behalf of The Red Wing Company, Inc. Executed on this 10th day of October, 1997.

Sincerely,

THE RED WING COMPANY, INC.

Eugene W. Bailen
President

EWB:lk

Chicago Office • 3375 N. Arlington Heights Rd., Suite C • Arlington Heights, IL 60004 • (847) 788-2000 • FAX (847) 788-0018
Fredonia Office • 196 Newton St. • Fredonia, NY 14063 • (716) 673-1000 • FAX (716) 679-7702



JAMESTOWN CONTAINER COMPANIES

John H. Bolender
General Manager
Jamestown Container Companies
Lockport Division
Lockport, NY 14094

October 13th 1997

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: STB Finance Docket No. 33388, CSX Corporation and CSX Transportation, Inc.,
Norfolk Southern Corporation and Norfolk Southern Railway Company -Control
and Operating Leases/Agreements- Conrail Inc. and Consolidated Rail Corp.

Dear Secretary Williams:

The purpose of this letter is to urge the Surface Transportation Board to grant the relief requested by the Erie-Niagara Rail Steering Committee, which will increase rail competition and improve rail transportation service in the counties of Erie, Niagara and Northern Chautauqua. Jamestown Container Companies, Lockport Division, manufactures and supplies packaging products to NY, PA, OH, IN and NJ. Our facility is heavily dependent on rail transportation for raw materials (paper Stocks) from varied locations across the eastern United States and is without access to multiple rail carriers. Companies located in Erie, Niagara and Northern Chautauqua will be severely disadvantaged by the proposal to divide Conrail. Unless this is changed, as requested by the Erie-Niagara Rail Steering Committee, the STB should not approve the proposal. Companies in Western New York that will obtain access only to CSX or Norfolk Southern as a result of the transaction will not be able to compete effectively with companies that are receiving access to more than one carrier in the locations of Detroit, Philadelphia, and Northern New Jersey. We believe that in order to prevent serious harm to companies located in the Erie-Niagara area, the STB should adopt the proposals of the Erie-Niagara Rail Steering Committee.

I, John H. Bolender, declare under penalty of perjury that the foregoing is true and correct and that I am qualified and authorized to file this letter on behalf of Jamestown Container Companies. Executed on this day of October 13th 1997.

Sincerely,

John H. Bolender
John H. Bolender.

Jamestown Container Lockport, Inc.

85 Grand Street • Lockport, NY 14094 • (716) 433-3875 • (800) 333-3875 • FAX (716) 433-4318



The Lowville & Beaver
River Railroad Co.

Mohawk Adirondack &
Northern Railroad Corp.

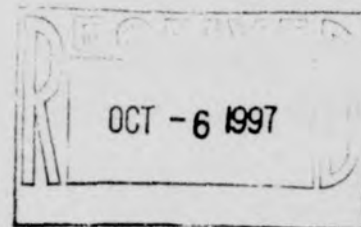


Depew Lancaster & Western
Railroad Co., Inc.

GVR Associates Inc.

"the" Delaware-Lackawanna
Railroad Co., Inc.

October 2, 1997



Dr. Ronald W. Coan
Executive Director
Erie County Industrial Development Agency
Liberty Building, Suite 300
424 Main Street
Buffalo, NY 14202

RE: Finance Docket 33388, CSX Corporation and CSX Transportation Inc., Norfolk Southern Corporation and Norfolk Southern Railway company - Control and Operating Lease/Agreements - Conrail Inc. And Consolidated Rail Corporation

Verified Statement
on behalf of
GVT Rail System
Parent Company of the
Falls Road Railroad Co., Inc.

Dear Dr. Coan:

We are pleased to see that the Erie County Industrial Development Agency (ECIDA) has chosen to become a party of record with the Surface Transportation Board on the issues involved with the division of Conrail by the Norfolk Southern and CSX. Our company supports, in principle, the manner in which the two parties have agreed upon to divide Conrail. However, we now have an opportunity to correct some of the competitive issues that have come about since 1976. When Conrail was created, some 21 years ago, it needed all of the competitive edges it could get, but times and economics have changed. Conrail has evolved into a strong carrier.

The Falls Road Railroad Co., Inc. is a subsidiary of the Western New York based Genesee Valley Transportation Co., Inc. (GVT Rail System), a privately held corporation established in 1989. GVT Rail System has provided industrial development opportunities throughout its growing system, which consists of 5 subsidiary railroads: the Lowville and Beaver River Railroad Company (LBR); Mohawk, Adirondack & Northern Railroad Corp. (MHW); "the" Delaware-

Lackawanna Railroad Co., Inc. (DL); Falls Road Railroad CO., Inc. (FRR) and; Depew, Lancaster & Western Railroad Co., Inc. (DLWR). GVT Rail's 5 railroads encompass 272 miles serving 92 companies which employ 6,400 people.

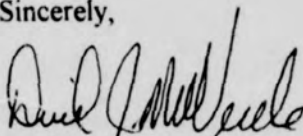
The FRR is a 41.1 mile line which runs from a Conrail connection at Lockport, Niagara County, New York through Orleans County and terminates in Brockport, Monroe County. This line was purchased by GVT Rail in November 1996 from Conrail which is the sole source of interchange for the FRR.

Our largest shipper, Knowlesville Agway, ships over 500 cars of grain products out from their Orleans County site via a 100% Conrail routing to Delaware, Pennsylvania and Maryland. Following the breakup of Conrail, this routing will become a CSX to NS movement. This structure will leave this Agway mill, and the FRR, in jeopardy of losing a significant portion of its market share.

We would like to implore the ECIDA, in concert with the Genesee Transportation Council to seek open access for NS and CSX to all of the shortlines in the Buffalo-Niagara Frontier area. At a minimum, the FRR would like to see a low reciprocal switch fee established between CSX and NS, therefore guaranteeing that both the FRR and Agway will continue to enjoy the market access we have for this traffic.

I, David J. Monte Verde, declare under penalty of perjury that the foregoing is true and correct, and that I am qualified and authorized to file this verified statement. Executed this 2nd day of October 1997

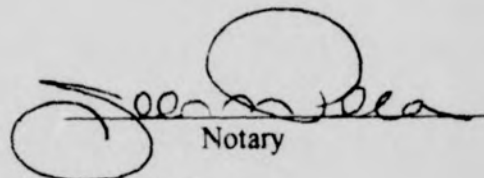
Sincerely,



David J. Monte Verde
President

DJMV/lm

cc: file



Notary

JEAN M. PECA
Notary Public, State of New York
Qualified in Genesee County
My Commission Expires 9-18-99

PART D

EXHIBITS

1 BEFORE THE
2 SURFACE TRANSPORTATION BOARD
3 Finance Docket No. 33388
4 CSX CORPORATION AND CSX TRANSPORTATION, INC.
5 NORFOLK SOUTHERN CORPORATION AND
6 NORFOLK SOUTHERN RAILWAY COMPANY
7 -- CONTROL AND OPERATING LEASES/AGREEMENTS --
8 CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION
9 RAILROAD CONTROL APPLICATION

10 HIGHLY CONFIDENTIAL

11 Washington, D.C.

12 Tuesday, September 30, 1997

13 Deposition of DAVID R. GOODE, a witness
14 herein, called for examination by counsel for the
15 Parties in the above-entitled matter, pursuant to
16 agreement, the witness being duly sworn by JAN A.
17 WILLIAMS, a Notary Public in and for the District
18 of Columbia, taken at the offices of Zuckert,
19 Scoutt & Rasenberger, L.L.P., Suite 700, 888
20 Seventeenth Street, N.W., Washington, D.C.,
21 20006-3939, at 10:00 a.m., Tuesday, September 30,
22 1997, and the proceedings being taken down by
23 Stenotype by JAN A. WILLIAMS, RPR, and
24 transcribed under her direction.

25

ALDERSON REPORTING COMPANY, INC.

(202)289-2260 (800) FOR DEPO
1111 14th ST., N.W., 4th FLOOR / WASHINGTON, D.C., 20005

1 No. 1. And I ask you if you recognize that
2 document?

3 A. I do.

4 Q. Do you recall the circumstances under
5 which this was drafted?

6 A. It was drafted as the date shows in
7 late October last year and is in the form of a
8 statement of general principles on which we were
9 basing our then bid for Conrail.

10 Q. And I gather these are principles that
11 you have thought long and hard about?

12 A. We did think long and hard about
13 these. And this document was drafted
14 accordingly.

15 Q. And would you regard these principles
16 as things that you would still advocate?

17 A. Yes.

18 Q. I take it, though, you do understand
19 that, in the hard bargaining as you referred to
20 it, the transaction did not produce in all
21 respects an agreement between you and CSX that
22 tracks precisely the principles that are laid out
23 in your Deposition Exhibit No. 1?

24 A. Oh, I think on the contrary, I think
25 that the agreement is very much in accord with

1 correctly?

2 A. Yes.

3 Q. And I'm just trying to get a clear
4 understanding of which principles Norfolk
5 Southern still advocates. Is it the principles
6 that are set out in this summary which are five
7 in number or is it the four that are identified
8 in the letter?

9 A. Well, I would -- I mean I would
10 subscribe, without looking to see if No. 5 is in
11 the letter, to the point which I understand No. 5
12 makes, that the competitors need to make a
13 commitment to owning lines and terminals and that
14 competition requires investment in order to
15 establish the base for it, that there ought not
16 to be an obligation on one of the competitors in
17 the Northeast to subsidize through its
18 investments others who might wish to be there.

19 And then the last sentence I think has
20 been accomplished. that Norfolk Southern and CSX
21 in their subsequent agreement agree to pay a fair
22 portion of the overall purchase price.

23 Q. As I think you indicated, Norfolk
24 Southern still advocates these principles. Would
25 it be fair to say that Norfolk Southern would

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1 believe that the implementation of these
2 principles would be in the public interest?

3 A. Yes, that would be fair.

4 Q. Let me direct your attention to page 3
5 of the letter which is actually the fourth sheet
6 of the document of Exhibit 1, the paragraph that
7 has the highlighted sentence beginning balanced
8 competition requires that the largest markets
9 have service by two railroads. Do you see that?

10 A. Yes, I see that.

11 Q. Now, the summary says that the largest
12 markets must be served by at least two large
13 railroads. Which would be Norfolk Southern's
14 preference, to have only two railroads or in some
15 markets there be more than two?

16 A. Oh, I think that the preference is that
17 balanced competition requires that the markets
18 have service by two railroads. I would suggest
19 to you that introducing competition into an area
20 by a second railroad where there has not been
21 that before introduces sufficient competition
22 under the principles and under general concepts
23 of competition and generally speaking will be
24 better for the shipper and the general public
25 than if that is -- than if there are more than

1 markets.

2 I think, you know, the major cities
3 throughout the East would fall within that
4 definition. I guess you would have to look at
5 every situation to make a determination of that.

6 Q. At the very bottom of this page,
7 beginning to go over to the next page, skipping
8 the first part of the sentence, it says we are
9 willing to look at the major markets defined by
10 the Department of Transportation in 1974 in the
11 process which led to the creation of Conrail. Do
12 you see that sentence?

13 A. Yes.

14 Q. Would that reference also include major
15 markets as defined by the U.S. Railway
16 Association in the conduct of its process of
17 creating Conrail?

18 A. I'm not sure of the distinction between
19 those two definitions.

20 Q. Do you recall --

21 A. I guess, if you have a particular
22 market in mind, I could perhaps respond to that.

23 Q. Well, let me ask you, in the reference
24 in Exhibit 11, page 3, which is the testimony
25 that you gave on March 20, the first full

1 paragraph, near the end, talking about the
2 Southern Tier, refers to it as a main link
3 between Northern New Jersey and Buffalo. Would
4 it be fair to conclude from that statement that
5 Norfolk Southern regards Buffalo as a major
6 market?

7 A. I would regard Buffalo as a major
8 market, yes.

9 Q. Do you recall that Congress in the
10 mid-seventies created an entity called the United
11 States Railway Association?

12 A. Yes.

13 Q. And do you recall that that, in fact,
14 was the entity that determined which assets of
15 the bankrupt Northeastern railroads would be
16 conveyed to certain other carriers?

17 A. Yes.

18 Q. Were you aware that the final system
19 plan proposed by the U.S. Railway Association in
20 1975 proposed to transfer the lines of the Erie
21 Lackawanna east of Akron, Ohio, to the Chessie
22 System?

23 A. I had forgotten that, if I knew it
24 then.

25 Q. Do you recall it now?

1 A. I do not dispute it if you tell me
2 that's so.

3 Q. Do you recall that the Erie Lackawanna
4 at that time had lines that served Buffalo and
5 Niagara Falls, New York?

6 A. I recall that the Erie generally served
7 the Buffalo area. I don't recall exactly where
8 the lines went.

9 Q. Does this reference to the Department
10 of Transportation in 1974 include perhaps a
11 reference to what's sometimes known as the
12 Coleman plan?

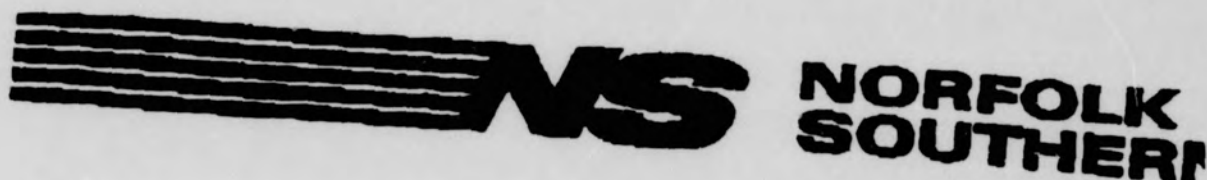
13 A. You know, I frankly just don't remember
14 what we were referring to in this reference.

15 Q. You don't have any specific
16 recollection of what the Coleman plan was?

17 A. I'm sure that the author of this
18 document who is -- who happens to be present
19 today remembers what he was referring to. And,
20 if it would help move it along, I would be glad
21 to --

22 Q. May I ask you to specifically identify
23 that person?

24 A. You want to go off the record a minute
25 and I will.



Date: Tuesday, October 29, 1996

Time: 06:39:01 PM

Number of Pages: 6

To:

From: Chairman, President & Chief Executive Officer

Name: David R. Goode

Company: Norfolk Southern Corporation

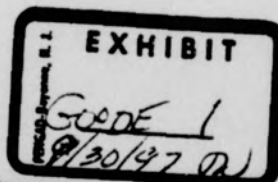
Fax Number: (757) 533-4884

Voice Number:

Note:

Norfolk Southern's Principles of Balanced Rail Competition follow. We are committed to these principles and seek your support for them.

David R. Goode



Principles of Balanced Rail Competition

Norfolk Southern's Commitment to NS/CR Customers

1. Competition Requires Rail Systems of Comparable Size and Scope

Railroads compete with each other, not just trucks
Balance between railroads must not be eliminated by mergers
Customers demand full rail route networks
Mergers should result in balance within regions, not dominance

2. The Largest Markets Must be Served by (at least) Two Large Railroads

Major markets require competitive service
Rail mergers should not be an excuse to control a market
Competition at ports is especially important
Lack of competition has disadvantaged Northeastern markets
Routes and terminals must be adequate to protect competition

3. Owned Routes are Essential to Competition

Railroads need to control their major trunk-line routes
Route ownership enables competition on safety, price and service
Competition on major corridors, such as New York/Philadelphia - Chicago,
should be over owned routes
Trackage rights do work for short-distance industrial access, and as
shortcuts between owned lines

4. Competition Depends on Effective Terminal Access

The rail network is anchored by terminals and yards
Terminals are just as important to competition as routes
Competitors must have the right to buy or build their own terminal facilities

5. Competition is Not Free

Competitors must make a commitment to owning lines and terminals
NS/CR will not subsidize its competitors
Competitors must pay a fair portion of the overall purchase price

BALANCED RAIL COMPETITION--NORFOLK SOUTHERN'S COMMITMENT TO THE CUSTOMERS OF NS/CONRAIL

October 29, 1996

To All Rail Shippers:

Norfolk Southern's Chairman, President and Chief Executive Officer David R. Goode announced NS's \$100 a share tender offer for Conrail on October 23. At the same time he emphasized that NS, in acquiring Conrail, would be receptive to competitive enhancements going far beyond anything envisaged by CSX's stonewall advocacy of the status quo. Specifically, he said that the nation's largest consumer market, the New York/New Jersey area, had been neglected.

Today we want to spell out, for the benefit of customers and communities, exactly how Norfolk Southern would be willing to shape its transaction to improve competition.

Let us say that we provide this outline not entirely out of altruism. In the first place, Norfolk Southern year in and year out is the nation's most efficient railroad and does not fear the impact of balanced competition. In fact, we think we will thrive in that environment. Secondly, we do not read the UPSP decision in the narrow, self-serving, hypertechnical way that CSX does. We read it to say that a region is best served by having two railroads of comparable size and scope competing for the business of customers. So we are willing to act consistently with that interpretation.

These are the principles of balanced competition, the fundamentals of competition in reality and not just in name.

First, balanced competition requires that the competing systems operate with comparable scale and scope, though absolute equality is unnecessary. While one hesitates to apply a mathematical formula, the 70-30 split which would result from a CSX acquisition of Conrail precludes effective competition. NS and CSX now have, respectively, about 45% and 55% shares of their total business. The spread of 10 percentage points is already an advantage for CSX if you credit Conrail -- it said at the time of the announcement that one reason for preferring CSX was its wider market reach. In the West, the respective shares of UP and of BNSF, before the concessions to BN, were 53/47. A NS/Conrail combination produces approximately a 60/40 split in the East, clearly preferable to approximately 70/30 with CSX/Conrail. And, applying the principles spelled out here, we are willing to work towards something even closer to an even split than 60/40.

Significant market dominance would exist across all industry sectors with a CSX/Conrail combination. One glaring example is that CSX/Conrail would serve approximately 110 power generating plants and NS would serve only 39.

These are not just numbers. Railroadng is a network business with increasing economies of scale. This reality means that if you are much smaller than your

competitor, you are competing with a handicap. We can cite case after case in which our system's ability to compete hinged not on its presence in some particular market but on the scope of our network and efficiency of our overall operations.

Perhaps the best example is the most recent. As you may know, with the present rough parity between NS and CSX, we recently won a 12-year contract for Ford's new mixing centers. We were able to give Ford a proposal for NS operation of centers as far west as Kansas City. And, of course, we serve many Ford destinations. Our ability to link all these points on our own rail network clearly appealed to Ford, and Norfolk Southern will ultimately increase its Ford business by approximately 60% as a result.

In short, in addition to the volume efficiencies which permit competitive pricing, our customers are demanding service which only a network of broad scope can provide. Real competition, long-term effective competition, depends on having railroads of comparable scale and scope. NS's acquisition of Conrail will make this goal much easier to achieve than CSX's, because the CSX/Conrail combination produces disparities so much greater than the NS/Conrail combination. Even so, we are willing to work to reduce our 60/40 disparity.

Second, balanced competition requires that the largest markets have service by two railroads. This follows from the previous discussion of balanced, effective competition -- a network cannot compete effectively, cannot meet the demands of customers operating on a global scale, if it does not reach all or most of the most important markets. Our customers do not just ask, can you get me from A to B. They ask, what can you do for my traffic moving between and among A to Z.

This is why Norfolk Southern recognized at the outset that it would have to address the New York/New Jersey port area situation. When the East is served by two railroads, competitive balance without access to the Port is a contradiction in terms. If only one large railroad provides good service to New York (or, in the case of the proposed CSX/Conrail combination, only one big railroad serves Philadelphia, Baltimore, Newark, Wilmington, Charleston, Pittsburgh, Indianapolis, Grand Rapids, and Lordstown), big customers do not really have two viable alternatives. They will need to use the railroad which has these big markets to itself.

Speaking more broadly, the port, the big city and the region which lacks a competitive rail infrastructure -- not competition to every station, but competition at and between the largest markets -- suffers a real handicap in the contest for industrial development and economic growth. While one can argue about the chicken and the egg, we offer for your consideration the lack of growth of the Port of New York during the Conrail monopoly epoch compared to the phenomenal growth of the Port of Hampton Roads, served by NS and CSX. Competitive rail service is relevant to growth and development. We have an economy and a rail system grounded on the reality that competition works better than monopoly.

As with the question of size, one hesitates to be too precise in prescribing solutions which may be affected by a host of real world complexities. But we are willing to look at New York and we are willing to look at the major markets defined by the Department

of Transportation in 1974 in the process which led to the creation of Conrail. The government did not intend to fortify a rail monopoly in the Northeast. It did intend, as the report just cited and the Final System Plan show, to establish competing systems.

Third, balanced competition requires that each railroad own its own routes to major markets where feasible. At Norfolk Southern, we pride ourselves on the quality of our fixed plant and the efficiency of our operations. Our year-in-and-year-out investment in the maintenance and renewal of our lines, at the highest level in the industry, is the bedrock of our safety record (best in the industry), our efficiency (best of any major railroad), and our highly regarded service. If you do not own your line, you do not control this investment, so you also lack control over safety, efficiency, and service. In short, you cannot stay competitive.

Here is an anecdote which makes the point. Norfolk Southern has trackage rights over a CSX double-track main line in Cincinnati. We continually experienced delays and associated added costs and service failures in trying to move our trains over these trackage rights. One could attribute this to the capacity of the CSX line or to the malign influence of CSX, but in truth the problem was that CSX's priorities and self-interest are different from our priorities, and CSX owns and controls the track. So we have cooperated to build a third main through Cincinnati, which Norfolk Southern owns.

Another example is the CP's attempt to provide competitive intermodal service to the New York area over trackage rights on Conrail. It never really worked, and CP may withdraw from the market. The route could have been adequate, and in fact had offered effective competition in the pre-Conrail era. But trackage rights over an unenthusiastic, competing owner did not suffice to give customers the service they wanted.

Norfolk Southern is not against trackage rights. We utilize them and other facilities coordinations widely. They can work well for "short cuts" and for access over branches of, say, up to 100 miles, solidly anchored on the user's own trunk line. Consider, in connection with BN's existing network, the combination of owned or jointly owned lines, trackage rights, and joint facilities prerogatives gained by BN in UPSP. You can see that contrary to popular understanding, traditional trackage rights were not accepted as a solution there. Furthermore, we are fully aware that circumstances such as tax issues, labor problems, or efficiency (density) considerations may dictate creative alternatives in which a user controls a non-owned line.

Where trackage rights are the best alternative for market access, they should be on the CMA, UPSP model, permitting access to new plants, build-outs, and terminals and other necessary infrastructure.

All that said, a railroad needs, where feasible, to own its own trunk lines to and between major markets. In the context of New York, this means we will be willing to sell a line, and will not play the game of pretending to wish our competitor success over extended trackage rights on lines owned and controlled by Norfolk Southern.

Fourth, balanced competition requires that each railroad have effective terminal access. It does not do you any good to ride the train if you can't get off. A railroad may need yards, intermodal and multi-modal terminals. It should have reasonable access from day one so competition will be a reality, and it should also have the right, where feasible, to build its own terminals.

Now it is much easier to lay out our understanding of what is necessary for effective competition than to bring it about. A host of details and problems can interfere.

We see a clear way through some of them. We will not give any competitor a free ride, but will expect them to pay, on a formula based on revenues and reflecting the costs of the acquisition to NS, for the assets they acquire. If they do not pay a proportionate price, we will not be competing on equal terms.

The last thing we want to comment on is the UPSP decision, on which CSX/Conrail had relied. That decision, as we understand it, is one of the best thought out in the long history of railroad regulation. It shows a grasp of the realities of railway economics and operations - of the importance of scope and scale for the efficiencies which permit improving service at decreasing rates - which our regulators have not always had in the past. It says to us that

(a) a third-place railroad like SP, despite the intrinsic value of its routes, could not provide effective competition,

(b) and in fact not even UP could provide competition comparable to the substantially larger BNSF;

(c) customers are best served when two strong railroads of comparable size operate to and between all the major markets in a region;

(d) enhanced trackage rights to particular points, when grounded on a solid infrastructure of lines owned by a railroad already having a presence in the area, can work to provide competition.

The STB decision in UPSP does not hold that a 70-30 split, perhaps not even a 60-40 split, is good for rail transportation and the customers who use rail transportation. It was said of the old Romans, they make a desert and call it peace. We would say of CSX/Conrail, they extend a monopoly and call it competition. They would have found cold comfort in UPSP for that kind of grab. Norfolk Southern will acquire Conrail and will apply, as it must, the real message of UPSP. NS/Conrail customers will have competitive alternatives in major markets.

NORFOLK SOUTHERN CORPORATION

1 BEFORE THE
2 SURFACE TRANSPORTATION BOARD
3 Finance Docket No. 33388
4 CSX CORPORATION AND CSX TRANSPORTATION, INC.
5 NORFOLK SOUTHERN CORPORATION AND
6 NORFOLK SOUTHERN RAILWAY COMPANY
7 -- CONTROL AND OPERATING LEASES/AGREEMENTS --
8 CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION
9 RAILROAD CONTROL APPLICATION

10 HIGHLY CONFIDENTIAL

11 Washington, D.C.

12 Thursday, September 11, 1997

13 Deposition of HENRY C. WOLF, a witness
14 herein, called for examination by counsel for the
15 Parties in the above-entitled matter, pursuant to
16 agreement, the witness being duly sworn by
17 FERNITA R. FINKLEY, a Notary Public in and for
18 the District of Columbia, taken at the offices of
19 Zuckert, Scoutt & Rasenberger, L.L.P., 888
20 Seventeenth Street, N.W., Washington, D.C.,
21 20006-3939, at 9:55 a.m., Thursday, September 11,
22 1997, and the proceedings being taken down by
23 Stenotype by FERNITA R. FINKLEY, RPR, CRR, and
24 transcribed under her direction.

25

1 some time since I went through this, but I
2 believe that's what this is.

3 BY MR. WOOD:

4 Q. Do you know who prepared this worksheet
5 that's on page 103?

6 A. My recollection is that this was
7 prepared again in the accounting department of
8 Norfolk Southern Corporation.

9 Q. On page 103, the first column is headed
10 Conrail Assets December '96 Estimate. You see
11 that column?

12 A. I do.

13 Q. Do you know what the source of that
14 estimate of Conrail's assets?

15 A. I do not.

16 Q. Do you know if that estimate would have
17 been prepared by Norfolk Southern's accounting
18 department?

19 A. I believe that it was.

20 Q. Do you know if Norfolk Southern's
21 accounting department might have engaged any
22 outside consulting or accounting firm to assist
23 in preparing that estimate?

24 A. I don't know that.

25 Q. Are you aware that CSX engaged the

1 accounting firm of Price Waterhouse to prepare a
2 fair value estimate of Conrail's assets?

3 A. I think that both Norfolk Southern and
4 CSX have engaged the firm of Price Waterhouse to
5 prepare a valuation, yes.

6 Q. What would the purpose of that
7 valuation be?

8 A. The valuation will be needed in order
9 to ultimately perform the purchase accounting
10 that will have to be performed.

11 Q. So Price Waterhouse has not completed
12 doing that valuation?

13 A. To the best of my knowledge, they have
14 not.

15 Q. Am I correct in looking at column --
16 the column headed Conrail Assets December '96
17 Estimate at the bottom, the grand total line
18 seems to indicate a valuation for those assets of
19 14,993,000,000?

20 A. That's the number that's on that
21 estimate, yes.

22 Q. Do you know what the numbers on the
23 left-hand side of this sheet represent?

24 MR. PLUMP: The very far left, that
25 row, that column of numbers on the far left?

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1 MR. WOOD: Yes.

2 THE WITNESS: I believe that those are
3 the old ICC account numbers for ICC accounting
4 purposes.

5 BY MR. WOOD:

6 Q. The line for account six, bridges
7 trestles and culverts under Conrail Assets
8 December '96 Estimate shows 2,320,000,000; is
9 that correct?

10 A. That's correct.

11 Q. The next column shows a June '97 -- has
12 a heading June '97 valuation Adjustment to
13 Specific Groups; is that correct?

14 A. Yes.

15 Q. And for that line it shows an
16 adjustment of 300 million. Do you know what the
17 source of that adjustment is?

18 A. I don't.

19 MR. PLUMP: Actually it says 300,000.

20 THE WITNESS: 300,000. Actually that
21 would be 300 million, wouldn't it.

22 MR. WOOD: For purposes of
23 clarification, I thought that the final three
24 zeros have been dropped off all these numbers.

25 MR. PLUMP: I stand corrected. I'm

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1 sorry.

2 THE WITNESS: 300 million.

3 BY MR. WOOD:

4 Q. I lost my train. Did you say you did
5 not know the source of that adjustment?

6 A. I don't.

7 Q. Two columns over from that there's a
8 heading June '97 Valuation Adjustment Overall.
9 For that line item for account six it shows
10 157,500,000 adjustment. Do you know the source
11 of that?

12 A. No, sir.

13 Q. Next column shows a June '97 Estimate
14 as the heading for that, and at the bottom the
15 grand total is 16,243,000,000; is that correct?

16 A. Yes.

17 Q. So as a result of these adjustments
18 between December 1996 as reflected in the column
19 we discussed before where the total was
20 14,993,000,000, it's been increased by a total of
21 1,250,000,000; is that correct?

22 A. That's correct.

23 Q. Now in that same column under June '97
24 Estimate, under the 16,243,000,000 there's a
25 number 6,693,000,000. If I understand it

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1 correctly, it has an item description after it,
2 CR base year fixed assets; is that correct?

3 A. That's what it says.

4 Q. And do you know the source of that
5 number?

6 A. I do not.

7 Q. Let me ask you again to turn to 175,
8 which is the Conrail pro forma balance sheet, and
9 ask you to look at column three and the line that
10 says properties-net?

11 A. Yes.

12 Q. Does the number 6,693,000,000 appear
13 there?

14 A. Yes, it does.

15 Q. Except for the possibility of
16 coincidence, might that be the source of the
17 number on worksheet 103?

18 A. Yes, it might.

19 Q. On page 103, the next item I guess is
20 the difference between the 16,243,000,000 and the
21 6,693,000,000. Does that appear to be correct?

22 A. Yes.

23 Q. Is the -- looking back on page 102, am
24 I correct in understanding then that if I
25 multiply the 9,550,000,000 by 58 percent, which

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1 is the number shown in the note there, I would
2 get the result that's shown in that column of
3 5,539,000,000?

4 A. I haven't done the math. I think you
5 just did.

6 Q. If you would like to double-check my
7 feeble arithmetic. Subject to check you'll
8 accept that?

9 A. Yes.

10 Q. So then that -- looking back to 131 --
11 excuse me, 171, my apologies, which is the
12 combined pro forma balance sheet, under the
13 column Purchase Accounting Adjustments we see in
14 properties-net under column 2B, 5,539,000,000.
15 That seems -- you would expect that's the source
16 of that adjustment, page 102, the item we just
17 identified?

18 A. The numbers certainly coincide.

19 Q. The next column -- excuse me, the next
20 line on page 171 shows a purchase accounting
21 adjustment for other long-term assets of
22 959 million. Do you know what the source of that
23 adjustment is?

24 A. I don't know what the source of that
25 is. I could speculate but I don't know for

1 certain.

2 Q. What's your understanding would be
3 included in the balance sheet category of other
4 long-term assets?

5 A. Well, I expect that assets in pension
6 plans and other funded plans might be included in
7 that.

8 Q. In the -- looking again back at page
9 102 further down in that group of items under
10 Allocation, there's an identification of other
11 assets-goodwill 550 million. What does that
12 refer to?

13 MR. PLUMP: The work paper.

14 THE WITNESS: Other assets-goodwill.
15 That -- in purchase accounting I expect that --
16 the valuations that are presented on 103 would
17 produce a goodwill number that would have to be
18 booked in performing purchase accounting, and
19 that's reflected in 550 million on this schedule.

20 BY MR. WOOD:

21 Q. Does that refer to the difference
22 between the valuation of the assets and the price
23 actually paid?

24 A. I'm not sure.

25 Q. Is there anything on this worksheet

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1 BEFORE THE
2 SURFACE TRANSPORTATION BOARD
3 Finance Docket No. 33388
4 CSX CORPORATION AND CSX TRANSPORTATION, INC.
5 NORFOLK SOUTHERN CORPORATION AND
6 NORFOLK SOUTHERN RAILWAY COMPANY
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8 CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION
9 RAILROAD CONTROL APPLICATION

10 HIGHLY CONFIDENTIAL

11 Washington, D.C.

12 Wednesday, September 3, 1997

13 Deposition of WILLIAM W. WHITEHURST,
14 JR., a witness herein, called for examination by
15 counsel for the Parties in the above-entitled
16 matter, pursuant to agreement, the witness being
17 duly sworn by JAN A. WILLIAMS, a Notary Public in
18 and for the District of Columbia, taken at the
19 offices of Arnold & Porter, 555 Twelfth Street,
20 N.W., Washington, D.C., 20004-1202, at
21 10:00 a.m., Wednesday, September 3, 1997, and the
22 proceedings being taken down by Stenotype by
23 JAN A. WILLIAMS, RPR, and transcribed under her
24 direction.

25

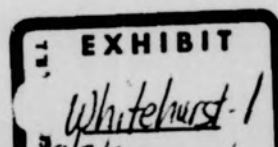
PURCHASE ACCOUNTING ADJUSTMENTS
PRO FORMA FINANCIAL STATEMENTS
SURFACE TRANSPORTATION BOARD APPLICATION
CSX / CONRAIL
(Amounts in Millions, Except Per Share Data)

I. SUMMARY OF JOINT CSX / NS PURCHASE PRICE

	Shares Acquired (000's)	Price Paid Per Share	Total Joint Cost	CSX Share 42%	NS Share 58%
A. Purchase of Outstanding Conrail Shares:					
CSX November 1996 tender offer	17,775	\$110	\$1,955		
NS January 1997 tender offer	8,200	115	943		
CSX / NS May 1997 joint tender offer and subsequent merger	60,500	115	6,958		
Total Conrail shares acquired	<u>86,475</u>		<u>9,856</u>	<u>\$4,140</u>	<u>\$5,716</u>
B. Cost of Unexercised Stock Options			39	16	23
Total Joint Purchase Price			9,895	4,156	5,739
Less: Conrail Base Year Net Book Value			3,169	1,331	1,838
Total Adjustment to Reflect Cost to the Purchasers			<u>\$6,726</u>	<u>\$2,825</u>	<u>\$3,901</u>

II. ALLOCATION OF CSX ADJUSTMENT TO REFLECT COST TO THE PURCHASERS

Component	Amount Allocated	Pro Forma Line Item Reference	Notes
(1) Allocation to Assets and Liabilities Proportionate to the Percentage			
Property and Equipment	4,011	A	Adjustment of property and equipment to fair value (estimated fair value \$16,243 less book value \$6,693 = \$9,550 write-up x 42% CSX share)
Investment in Affiliates	52	B	Adjustment of unconsolidated investments to fair value
Other Assets	98	B	Adjustment of other assets to fair value
Employee Benefits Trust	115	B	Adjustment of employee benefits trust assets to fair value
Long-Term Debt	(71)	C	Adjustment of debt to fair value
Other Long-Term Liabilities	(42)	F	Adjustment of other long-term liabilities to fair value
Non-Agreement Employees Separation and Relocation	(104)	E	Accrual of liabilities for separation and relocation
	<u>4,055</u>		



(2) Allocation to Assets and Liabilities**Other Than Proportionate to the Percentage**

Separate Facility Obligations	(151)	F	Accrual of net lease commitments
Agreement Employees Separation and Relocation	(66)	E	Accrual of liabilities for separation and relocation
	<u>(217)</u>		

Joint Adjustment to Reflect Cost to the Purchasers
Before Deferred Taxes and Goodwill (1) + (2)

3,842

(3) Adjustment for Deferred Taxes

(1,466)

D

Deferred taxes related to fair value adjustments

(4) Goodwill Arising From Joint Purchase Price

449

B

Cost not allocated based on preliminary fair value estimates

CSX Adjustment to Reflect Cost to the Purchasers
Arising From Joint Purchase Price

2,825

(5) CSX Transaction Costs

Debt Issuance Costs

50

C

Transaction Costs

50

B

100

Total CSX Adjustment to Reflect Cost to the Purchasers

\$2,925

III. SUMMARY OF PURCHASE ACCOUNTING ADJUSTMENT

Pro Forma Financial Statement Line	Line Item Reference	Adjustment Amount			Total
		Adj to Reflect Cost to the Purchasers	Long-Term Debt	Conrail Equity Elimination	
Properties-Net	A	\$4,011			\$4,011
Other Long-Term Assets	B	764			764
Long-Term Debt	C	(21)	(4,256)		(4,277)
Deferred Income Taxes	D	(1,466)			(1,466)
Accounts Payable & Other Current Liabilities	E	(170)			(170)
Other Long-Term Liabilities	F	(193)			(193)
Common Stock	G			36	36
ESOP Preferred Stock	H			118	118
Other Capital	I			602	602
Retained Earnings	J			575	575
		<u>\$2,925</u>	<u>(\$4,256)</u>	<u>\$1,331</u>	<u>\$0</u>

CSX 19 CO 000121

CERTIFIED COPY

1

1 BEFORE THE
2 SURFACE TRANSPORTATION BOARD
3 Finance Docket No. 33388
4 CSX CORPORATION AND CSX TRANSPORTATION, INC.
5 NORFOLK SOUTHERN CORPORATION AND
6 NORFOLK SOUTHERN RAILWAY COMPANY
7 -- CONTROL AND OPERATING LEASES/AGREEMENTS --
8 CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION
9 RAILROAD CONTROL APPLICATION

10 HIGHLY CONFIDENTIAL

11 Washington, D.C.

12 Tuesday, August 26, 1997

13 Deposition of DONALD W. SEALE, a
14 witness herein, called for examination by counsel
15 for the Parties in the above-entitled matter,
16 pursuant to agreement, the witness being duly
17 sworn by JAN A. WILLIAMS, a Notary Public in and
18 for the District of Columbia, taken at the
19 offices of Zuckert, Scoutt & Rasenberger, L.L.P.,
20 Suite 700, 888 Seventeenth Street, N.W.,
21 Washington, D.C., 20006-3939, at 10:00 a.m.,
22 Tuesday, August 26, 1997, and the proceedings
23 being taken down by Stenotype by JAN A. WILLIAMS,
24 RPR, and transcribed under her direction.

25

ALDERSON REPORTING COMPANY, INC.

(202)289-2260 (800) FOR DEPO
1111 14th ST., N.W., 4th FLOOR / WASHINGTON, D.C., 20005

1 from the 82 million that Mr. Williams has?

2 A. It's different in that it's expressed
3 in current inflated dollars. I think
4 Mr. Williams' was expressed in 1995 constant
5 dollars. And also the number has -- there's been
6 some competitive diversions added to the actual
7 rate compression number and an aggregate number
8 generated from those two.

9 Q. In relation to the 82 million that
10 Mr. Williams has, what is the current estimate as
11 a result of the subsequent studies that you
12 described?

13 A. I can't recall the number specifically,
14 but I think it's in the range of \$160 million
15 compared to the \$82 million that Mr. Williams'
16 study generated.

17 Q. Did you request Mr. Williams to perform
18 that analysis of the rate compression, the
19 subsequent analysis that produced the \$160
20 million figure?

21 A. No.

22 Q. Do you know who did from Norfolk
23 Southern?

24 A. No, I do not.

25 Q. Do you know if Mr. Williams or anyone

ORIGINAL

1

1 BEFORE THE
2 SURFACE TRANSPORTATION BOARD
3 Finance Docket No. 33388
4 CSX CORPORATION AND CSX TRANSPORTATION, INC.
5 NORFOLK SOUTHERN CORPORATION AND
6 NORFOLK SOUTHERN RAILWAY COMPANY
7 -- CONTROL AND OPERATING LEASES/AGREEMENTS --
8 CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION
9 RAILROAD CONTROL APPLICATION
10 HIGHLY CONFIDENTIAL

11 Washington, D.C.
12 Monday, September 8, 1997
13 Deposition of JOHN Q. ANDERSON, a
14 witness herein, called for examination by counsel
15 for the Parties in the above-entitled matter,
16 pursuant to agreement, the witness being duly
17 sworn by JAN A. WILLIAMS, a Notary Public in and
18 for the District of Columbia, taken at the
19 offices of Arnold & Porter, 555 Twelfth Street,
20 N.W., Washington, D.C., 20004-1202, at
21 10:05 a.m., Monday, September 8, 1997, and the
22 proceedings being taken down by Stenotype by
23 JAN A. WILLIAMS, RPR, and transcribed under her
24 direction.

25

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1 question. Are you aware of instances in which
2 CSX's pricing or service offerings are influenced
3 by the choice of some other shipper that competes
4 with the shipper you're trying to serve at the
5 moment, where that other shipper is served by two
6 railroads? Do you understand the question?

7 A. Yes. I'm not aware of a situation
8 where that has been explicitly addressed, at
9 least as I have been informed or been in
10 discussions internally.

11 Q. And I believe your testimony, this is
12 switching the subject somewhat, I believe your
13 testimony to Mr. Wood was that you are not aware
14 of any specific studies that CSX has done about
15 what's been referred to elsewhere as rate
16 compression or rate reductions or pressure to
17 reduce rates post-transaction; is that correct?

18 A. My previous testimony was correct.

19 Q. And I don't want to beat a dead horse,
20 but I will just ask one more question. Do you
21 believe that there is likely to be rate
22 compression, if you will accept the use of that
23 term, post-transaction?

24 A. I believe in different markets there
25 will be different competitive dynamics than we

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1 had before the transaction. My experience is
2 that competitive dynamics influence prices and,
3 therefore, it would be unlikely that all prices
4 would remain exactly the same after as before.

5 Q. So, in a gross sense, would you agree
6 with me that more competition tends to put
7 pressure to lower prices?

8 A. Yes, I would agree.

9 Q. And you believe there's going to be
10 more competition post-transaction in the
11 Northeastern United States?

12 A. I do.

13 Q. Regarding movements of phosphate from
14 Florida, is it your understanding that that
15 phosphate is used only as fertilizer or does it
16 have other uses in chemical manufacturing?

17 A. It has other uses also. I'm not
18 familiar with the details, but I know it goes
19 into other products.

20 Q. Do you recall any specific projection
21 CSX has about new flows of phosphate from Florida
22 to Northeastern points post-transaction?

23 A. No.

24 Q. Did you have any involvement in the
25 selection of or designation of which chemical

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1 BEFORE THE
2 SURFACE TRANSPORTATION BOARD
3 Finance Docket No. 33388
4 CSX CORPORATION AND CSX TRANSPORTATION, INC.
5 NORFOLK SOUTHERN CORPORATION AND
6 NORFOLK SOUTHERN RAILWAY COMPANY
7 -- CONTROL AND OPERATING LEASES/AGREEMENTS --
8 CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION
9 RAILROAD CONTROL APPLICATION

10 HIGHLY CONFIDENTIAL

11 Washington, D.C.
12 Thursday, September 25, 1997

13 Deposition of JAMES W. McCLELLAN, a
14 witness herein, called for examination by counsel
15 for the Parties in the above-entitled matter,
16 pursuant to agreement, the witness being duly
17 sworn by JAN A. WILLIAMS, a Notary Public in and
18 for the District of Columbia, taken at the
19 offices of Zuckert, Scoutt & Rasenberger, L.L.P.,
20 Suite 700, 888 Seventeenth Street, N.W.,
21 Washington, D.C., 20006-3939, at 10:05 a.m.,
22 Thursday, September 25, 1997, and the proceedings
23 being taken down by Stenotype by JAN A. WILLIAMS,
24 RPR, and transcribed under her direction.

25

1 A. I'm familiar with board presentations
2 because I was there. I don't know what testimony
3 was given.

4 Q. And the board you're referring to is
5 the board of directors of the U.S. Railway
6 Association?

7 A. Yes, sir.

8 Q. Let me ask you to turn to page 507,
9 where there is a discussion under this heading of
10 the federal solution, particularly in the third
11 paragraph, the sentence beginning in its final
12 system plan. And the sentence concludes with the
13 reference fact that most of the remaining
14 bankrupt carriers be acquired by Chessie System.
15 Do you see that reference?

16 A. Yes, sir, I do.

17 Q. And Chessie System is, of course, the
18 predecessor or one of the predecessors of the
19 current CSX system?

20 A. Yes, sir.

21 Q. Do you recall the identity of the
22 remaining bankrupt carriers that would be
23 acquired by Chessie under the final system plan?

24 A. Yes, sir, I do. Substantially all of
25 the former Reading, the then Reading lines, would

1 have gone to Chessie, substantially all of the
2 Erie Lackawanna Railroad as far west as Central
3 Ohio would have gone to Chessie. And I'm unclear
4 about -- the plan -- the sale package included
5 rights into -- some additional rights into
6 Central New Jersey.

7 The Reading actually got very close to
8 the New York area on the Port Reading branch, but
9 there were some additional Central New Jersey
10 properties or rights that were part of that.

11 Q. Had USRA and Chessie actually come to
12 an agreement on a price that would be paid for
13 these properties?

14 A. Yes, sir, there was an agreement on the
15 price. And it was approved by the U.S. Railway
16 board.

17 Q. We discussed a few minutes ago the
18 Coleman plan. And you discussed this in this
19 paragraph that we previously referred to on page
20 508. And the basic outline as I understand it
21 from your sentence here is that the former New
22 York Central lines would have been -- and
23 portions of smaller bankrupts would have been
24 acquired by the then Chessie System. Again, if
25 you can recall, do you know which portions of the

1 A. In I believe 1994, there were merger
2 discussions between Conrail and Norfolk
3 Southern.

4 Q. Any others that you can recall?

5 A. In 1995 Norfolk Southern and CSX had
6 negotiations regarding a split of Conrail.

7 Q. Were you personally involved in those
8 negotiations?

9 A. Yes, sir, I was.

10 Q. Were those negotiations initiated by
11 Norfolk Southern?

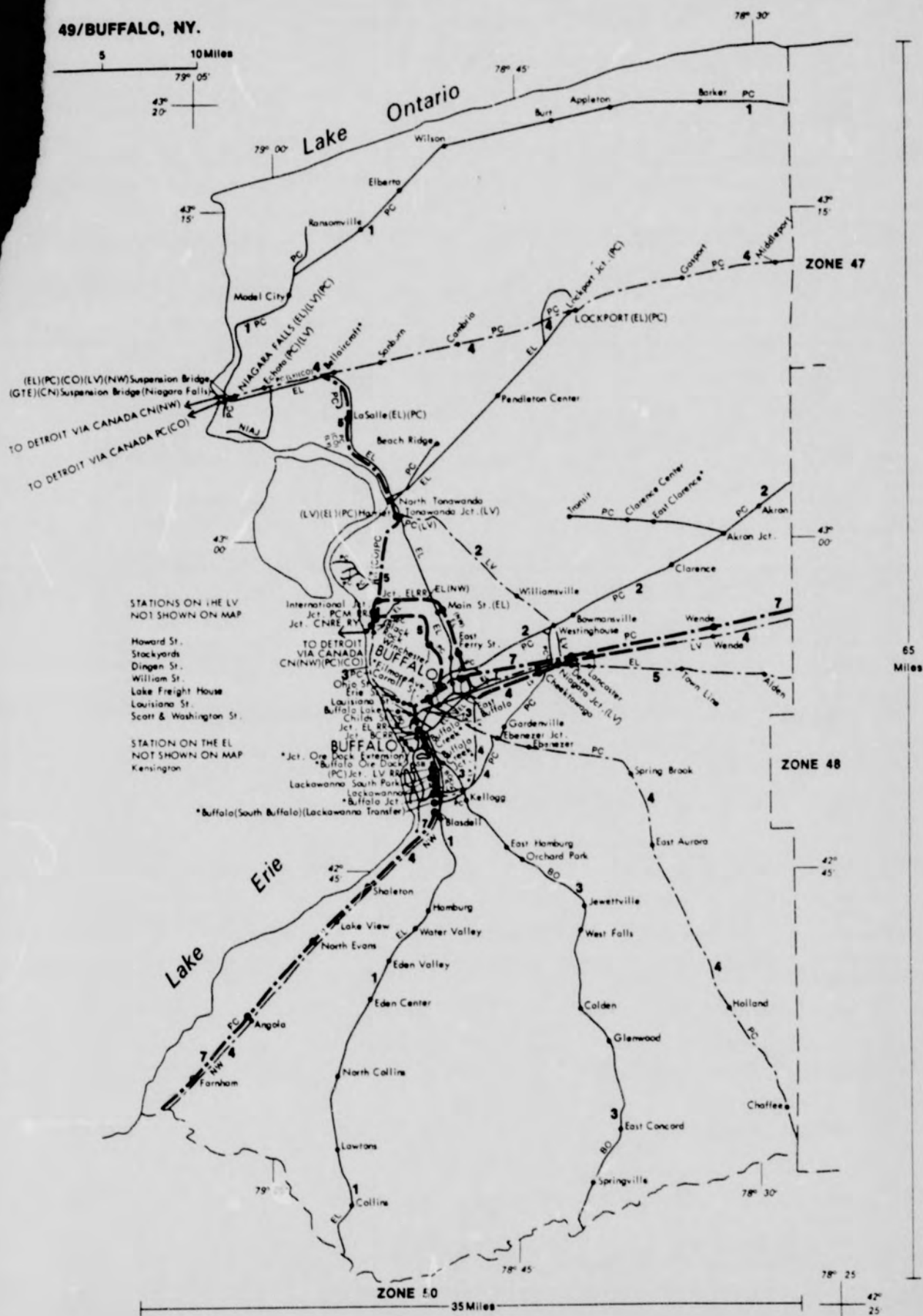
12 A. The first negotiations grew out of a
13 number of discussions between Messrs. Goode and
14 Hagen on areas of cooperation. And no particular
15 party took a lead, just one day we said we ought
16 to talk about maybe we ought to merge this. As I
17 recall Mr. Snow initiated the discussions on the
18 breakup.

19 Q. And Mr. Snow was then president of CSX
20 Transportation?

21 A. I believe he was chairman of CSX Corp.
22 at the time.

23 Q. And Mr. Hagen you referred to, what was
24 his position?

25 A. He was chairman and chief executive



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1 BEFORE THE
2 SURFACE TRANSPORTATION BOARD
3 Finance Docket No. 33388
4 CSX CORPORATION AND CSX TRANSPORTATION, INC.
5 NORFOLK SOUTHERN CORPORATION AND
6 NORFOLK SOUTHERN RAILWAY COMPANY
7 -- CONTROL AND OPERATING LEASES/AGREEMENTS --
8 CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION
9 RAILROAD CONTROL APPLICATION
10 HIGHLY CONFIDENTIAL
11 Washington, D.C.
12 Thursday, September 18, 1997
13 Deposition of JOHN W. SNOW, a witness
14 herein, called for examination by counsel for the
15 Parties in the above-entitled matter, pursuant to
16 agreement, the witness being duly sworn by MARY
17 GRACE CASTLEBERRY, a Notary Public in and for the
18 District of Columbia, taken at the offices of
19 Arnold & Porter, 555 Twelfth Street, N.W.,
20 Washington, D.C., 20004-1202, at 10:00 a.m.,
21 Thursday, September 18, 1997, and the proceedings
22 being taken down by Stenotype by MARY GRACE
23 CASTLEBERRY, RPR, and transcribed under her
24 direction.
25

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1 details of that I probably knew fairly well at
2 one time but that's 20 years ago.

3 Q. Let me see if I can refresh your
4 recollection. Do you recall if the preferred
5 alternative under the final system plan would
6 have contemplated allocating to the Chessie
7 System the lines of the Erie Lackawanna east of
8 Akron, Ohio between Akron Ohio and New York City?

9 A. I think that was part of it, yes.

10 Q. Do you have any recollection as to why
11 the preferred alternative proposed by the USRA
12 final system plan was unsuccessful, was not
13 achieved?

14 A. Yes. I think it wasn't achieved in
15 large part because, as I suggested earlier, many
16 of the same reasons apply to this. Inability to
17 get labor agreements, concern on the part of the
18 rail managements with the risks, financial risks
19 associated with northeastern railroading, and
20 very high capital costs associated with getting
21 the bankrupt properties into effective operating
22 condition. So heavy financial burdens associated
23 with upgrading the track and structures and
24 equipment.

25 Q. Do you recall that the final system

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CSX/NS-61

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**CSX CORPORATION AND CSX TRANSPORTATION, INC.
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
—CONTROL AND OPERATING LEASES/AGREEMENTS—
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION**

STB FINANCE DOCKET NO. 33388

**APPLICANTS' RESPONSES TO
FIRST SET OF INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS OF
ERIE-NIAGARA RAIL STEERING COMMITTEE
TO APPLICANTS (ENRS-2)**

Applicants^{1/} hereby respond to the first set of discovery requests to Applicants served by Erie-Niagara Rail Steering Committee ("ENRS" or "Requester").

GENERAL RESPONSES

The following general responses are made with respect to all of the requests and interrogatories.

^{1/} "Applicants" refers collectively to CSX Corporation and CSX Transportation (collectively "CSX"), Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively "NS"), and Consolidated Rail Corporation and Conrail Inc. (collectively "Conrail").

readily available in the form requested, on the ground that such documents or information could only be developed, if at all, through unduly burdensome and oppressive special studies, which are not ordinarily required and which Applicants object to performing.

8. Applicants object to Instructions Nos. 3, 4, 6 and 10 to the extent that they seek to impose requirements that exceed those specified in the applicable discovery rules and guidelines.

INTERROGATORIES

Interrogatory No. 1: State what criteria were used by the Applicants in determining that South Jersey/Philadelphia, North Jersey and Detroit should be Shared Assets Areas.

1. Subject to the General Objections stated above, Applicants respond as follows:

CSX and NS did not apply any specific criteria in determining that South Jersey/Philadelphia, North Jersey and Detroit would be Shared Assets Areas. Determining the location and scope of the Shared Assets Areas was the culmination of an arms length bargaining process over the division of Conrail assets. The boundaries of the Shared Assets Areas were developed in negotiations between CSX and NS in the period between the negotiation of the Third Amendment to the Conrail Merger Agreement in early March 1997 (see CSX/NS-25, Volume 8A at 201 et seq.) and the execution of the April 8, 1997 Letter Agreement. Further discussions took place in the period following execution of the Letter Agreement and leading up to the execution of the Transaction Agreement. See CSX/NS 25, Volume 8A at 350 et seq. and Volume 8B at 1 et seq., and Volume 8C at 1 et seq. The determination of the location and scope of the Shared Asset Areas was only one aspect of the

negotiation of a complex plan to divide a major rail system consisting of thousands of miles of track and hundreds of rail facilities.

Interrogatory No. 2: Identify and describe all documents which relate to or were used in the selection and determination of the Shared Assets Areas.

2. Applicants object to this request on the basis that it is unduly burdensome and overly broad. Without waiving these objections, and subject to the General Objections stated above, Applicants respond as follows:

See Application, Volume 1, at pages 45-49, 481-82, and 514 and documents referenced therein; Letter Agreement dated April 8, 1997, Volume 8A; and Transaction Agreement, Volumes 8B and 8C; and CSX's Operating Plan, Volume 3A. Documents responsive to this request are also located in Applicants' depository at CSX 21 CO 001856, CSX 21 CO 002387-412, and CSX 21 CO 002275.

Interrogatory No. 3: Identify all persons who participated in the selection and determination of the Shared Access Areas.

3. Applicants assume that this interrogatory seeks information regarding the "Shared Asset Areas." Applicants object to this interrogatory as vague, ambiguous and overly broad. Applicants further object to this interrogatory to the extent that it seeks privileged information. As stated in response to Interrogatory No. 1, determining the location and scope of the Shared Assets Areas was only one aspect of the negotiation of a complex plan to divide a major rail system consisting of thousands of miles of track and hundreds of rail facilities. Without waiving any objection, and subject to the General Objections stated above, Applicants respond as follows:

CONFIDENTIAL

1 BEFORE THE
2 SURFACE TRANSPORTATION BOARD
3 Finance Docket No. 33388
4 CSX CORPORATION AND CSX TRANSPORTATION, INC.
5 NORFOLK SOUTHERN CORPORATION AND
6 NORFOLK SOUTHERN RAILWAY COMPANY
7 -- CONTROL AND OPERATING LEASES/AGREEMENTS --
8 CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION
9 RAILROAD CONTROL APPLICATION

10 HIGHLY CONFIDENTIAL

11 Washington, D.C.

12 Wednesday, September 24, 1997

13 Deposition of WILLIAM M. HART, a
14 witness herein, called for examination by counsel
15 for the Parties in the above-entitled matter,
16 pursuant to agreement, the witness being duly
17 sworn by JAN A. WILLIAMS, a Notary Public in and
18 for the District of Columbia, taken at the
19 offices of Arnold & Porter, 555 Twelfth Street,
20 N.W., Washington, D.C., 20004-1202, at 9:05 a.m.,
21 Wednesday, September 24, 1997, and the
22 proceedings being taken down by Stenotype by
23 JAN A. WILLIAMS, RPR, and MARY GRACE CASTLEBERRY,
24 RPR, and transcribed under their direction.

25

1 Q. Were there objective criteria that were
2 used to decide whether an area would be a shared
3 asset area?

4 A. No.

5 Q. Were there subjective criteria?

6 A. We considered lots of elements in the
7 creation of a shared asset area.

8 Q. Do you recall what those elements were?

9 A. Uh-huh.

10 Q. That's a yes?

11 A. Yes, sir, that's a yes. I apologize.

12 Q. No problem. Go right ahead.

13 A. In the Northern New Jersey area, for
14 example, with the allocation of the X as shown in
15 Exhibit 1, Norfolk came into that shared asset
16 area from the south end of the territory and CSX
17 comes into the Northern New Jersey area from the
18 north end of the territory, while they were part
19 of historic separate companies of the old NYC and
20 the old PRR, what had occurred in the 20 years of
21 Conrail's running of this property is the
22 Northern New Jersey area became an integrated
23 whole.

24 So that consideration of this area of
25 the Conrail franchise being integrated and now

1 being accessed by one carrier from the north and
2 one carrier from the South didn't lend itself to
3 an easy division. That area also was represented
4 as a monopoly from the creation of the Federal
5 Government in the creation of Conrail after the
6 bankruptcies in the Northeast.

7 So the market in that area was
8 attractive to both parties. And the result of
9 all of that and probably a dozen other things was
10 involved in the thinking that established the
11 shared asset area.

12 Q. Have you furnished that answer?

13 A. (Witness nods head.)

14 Q. That was as I understood it confined to
15 New Jersey. I wonder if you could give me an
16 answer with respect to why Detroit was determined
17 to be a shared asset area, if I'm correct in that
18 description?

19 A. Detroit is a shared asset area. The
20 lines in and around Detroit for the most part
21 represent or are characterized by areas of open
22 access to the carriers who operate in Detroit
23 except for a line known variously as the Utica
24 branch which has been an exclusive Conrail-served
25 territory historically and again an area of

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SLOVER & LOFTUS

ATTORNEYS AT LAW

1224 SEVENTEENTH STREET, N. W.

WASHINGTON, D. C. 20036

WILLIAM L. SLOVER
C. MICHAEL LOFTUS
DONALD G. AVERY
JOHN H. LE SEUR
KELVIN J. DOWD
ROBERT D. ROSENBERG
CHRISTOPHER A. MILLS
FRANK J. PERGOLIZZI
ANDREW B. KOLESAR III



October 21, 1997

BY HAND

Surface Transportation Board
Office of the Secretary
Case Control Unit
Attention: Finance Docket No. 33388
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: Finance Docket No. 33388, *CSX Corporation and CSX Transportation, Inc. and Norfolk Southern Railway Company--Control and Operating Leases/Agreements--Conrail Inc. and Consolidated Rail Corporation--Transfer of Railroad Line by Norfolk Southern Railway Company to CSX Transportation, Inc.*

Dear Mr. Secretary:

Enclosed for filing in the captioned proceeding please find an original and twenty-five (25) copies of the "Comments and Request for Conditions of the **National Railroad Passenger Corporation (Amtrak)** on the Proposed NS/CSX Acquisition and Division of Conrail."

Also enclosed is a diskette with the enclosed filing in Wordperfect 5.1 form.

Thank you for your attention to this matter.

Sincerely,

Donald G. Avery

Donald G. Avery

Encl.

cc: Judge Leventhal (w/o diskette)
Applicants (w/o diskette)
Parties of Record (w/o diskette)

BEFORE THE
SURFACE TRANSPORTATION BOARD

CSX CORPORATION AND CSX
TRANSPORTATION, INC. AND
NORFOLK SOUTHERN RAILWAY COMPANY
COMPANY -- CONTROL AND OPERATING
LEASES/AGREEMENTS -- CONRAIL AND
CONSOLIDATED RAIL CORPORATION --
TRANSFER OF RAILROAD LINE BY
NORFOLK SOUTHERN RAILWAY COMPANY
TO CSX TRANSPORTATION, INC.

Finance Docket No. 33388



COMMENTS AND REQUEST FOR CONDITIONS OF THE
NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)
ON THE PROPOSED NS/CSX ACQUISITION
AND DIVISION OF CONRAIL

NATIONAL RAILROAD PASSENGER
CORPORATION

Richard G. Slattery
60 Massachusetts Avenue, NE
Washington, DC 20002
(202) 906-3987

OF COUNSEL:

Slover & Loftus
1224 Seventeenth St., NW
Washington, DC 20036

Date: October 21, 1997

Donald G. Avery
Christopher A. Mills
Frank J. Pergolizzi
SLOVER & LOFTUS
1224 Seventeenth Street, NW
Washington, DC 20036
(202) 347-7170

BEFORE THE
SURFACE TRANSPORTATION BOARD

CSX CORPORATION AND CSX
TRANSPORTATION, INC. AND
NORFOLK SOUTHERN RAILWAY COMPANY
COMPANY -- CONTROL AND OPERATING
LEASES/AGREEMENTS -- CONRAIL AND
CONSOLIDATED RAIL CORPORATION --
TRANSFER OF RAILROAD LINE BY
NORFOLK SOUTHERN RAILWAY COMPANY
TO CSX TRANSPORTATION, INC.

Finance Docket No. 33388

COMMENTS AND REQUEST FOR CONDITIONS OF THE
NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)
ON THE PROPOSED NS/CSX ACQUISITION
AND DIVISION OF CONRAIL

Pursuant to Decision No. 12, served by the Surface Transportation Board in this proceeding on July 23, 1997, the National Railroad Passenger Corporation ("NRPC" or "Amtrak") hereby submits its Comments on the proposed transaction.

These comments consist of argument of counsel, together with the Verified Statement of **James L. Larson**, Amtrak's Assistant Vice President, Operations. Mr. Larson explains how the Applicants' proposed operations could affect Amtrak's intercity passenger service, particularly on the "Northeast Corridor" ("NEC") between New York City and Washington, DC, which is owned and operated by Amtrak primarily for the benefit of intercity and commuter passenger service (the latter provided by or for various state commuter authorities), but over which Conrail has an easement for the provision of freight service.

Mr. Larson also addresses the likely impact of Applicants' proposed operational changes on Amtrak trains that operate over Applicants' lines outside of the Northeast Corridor.

SUMMARY OF POSITION

Amtrak is presently engaged in negotiations with the Applicants, seeking agreement on terms and conditions under which the Applicants can inherit and share Conrail's "freight franchise" on the NEC, as contemplated by their Application, without adversely affecting current or future intercity and commuter passenger operations thereon. As Mr. Larson explains, however, the task of integrating the Applicants' restructured and expanded freight operations into the matrix of existing passenger usage is a difficult one, and it is made all the more difficult by Amtrak's need to accommodate anticipated increases in commuter operations. Moreover, where Applicants' proposed operations would require physical plant modifications, e.g. Norfolk Southern's proposal to increase catenary clearances on a portion of the Corridor, Amtrak must ensure that such work can be performed without disruption of passenger service, and that the entire cost thereof -- which Amtrak believes will far exceed the estimates set out in the Application -- is borne by the freight operator(s).

The complexities of shared NEC usage will be compounded if, as Applicants propose, the Conrail freight easement is used by both NS and CSX, and even by "Conrail Jr." between Philadel-

phia and New York.¹ The complexities of Applicants' proposal for post-merger freight operations on the NEC, and the difficult task that Amtrak will face in accommodating those proposals in light of the intensive intercity and commuter passenger train usage of the NEC, counsel against granting the Applicants' request that the Board "override" Conrail's lack of authority under its freight service easement to permit the sharing of that easement by multiple freight carriers without Amtrak's consent.²

Amtrak also has some as-yet-unresolved concerns about the impacts of the proposed transaction on its passenger train operations outside the Northeast Corridor. As detailed by Mr. Larson, those concerns relate primarily to (a) certain CSX lines (and Conrail/CSX lines) over which Amtrak trains operate, which are projected to experience increased freight volumes that could exacerbate CSX's already-severe on-time performance problems; (b) the "Empire Corridor" in New York, running from Albany to Buffalo, which Amtrak and New York State would like to upgrade for high speed passenger service but which CSX has targeted for increased freight volumes that might conflict with the planned

¹Under the easement pursuant to which Conrail conveyed the NEC to Amtrak in 1976, and the operating agreement between Amtrak and Conrail that implements the terms of that easement, the proposals of NS and CSX to divide and for the most part share Conrail's operating rights over the NEC require Amtrak's consent.

²Indeed, while the Board will probably not have to reach the issue in this case, it would almost certainly lack the authority to expand Conrail's limited easement as Applicants have urged, effectively transferring interests in real property from Amtrak to Applicants without compensation.

upgrading; and (c) the Detroit-Chicago Corridor, which Amtrak and the State of Michigan are presently upgrading for high speed passenger service, but for which NS and the Canadian Pacific Railway ("CP"), to whom NS has granted "haulage rights" over the line, project significant increases in freight volumes that likewise could conflict.

In order to guard against a repeat of the problems Amtrak is experiencing as UP and SP attempt to implement their merger, which have had a disastrous effect upon the on-time performance of Amtrak trains on their systems, Amtrak requests that the Board impose a **five-year oversight condition** with respect to the merger's impact on Amtrak's on-time performance.

Amtrak also requests that the STB condition any approval of the proposed merger on a commitment by CSX (as to the Empire Corridor) and NS (as to the Detroit-Chicago corridor) to cooperate in good faith with Amtrak and with the respective state authorities on efforts to institute high speed passenger service over those lines.³

³In seeking these conditions, Amtrak recognizes that the Board cannot ameliorate all adverse impacts of the merger on Amtrak. Thus, it does not ask the Board to address the consequence of the merger that will cause Amtrak the greatest financial harm: Applicants' plans to eliminate 2,654 jobs. These job eliminations, like the elimination of more than 6,000 railroad jobs in the BNSF and UP/SP mergers, will increase what Amtrak, which has relatively few retired workers, has to pay in Railroad Retirement taxes to fund the pensions of freight railroad retirees who never worked a day for Amtrak. In fiscal year 1997, Amtrak paid approximately \$142 million to cover the shortfall between what freight railroads paid into the Railroad Retirement system and the pensions that were paid to their former employees. The elimination of thousands of additional freight railroad jobs
(continued...)

COMMENTS

I. INTRODUCTION.

Under the ICC Termination Act, the Board may approve the instant Application, under which NS and CSX would divide up Conrail between them, only if it affirmatively finds that the proposed transaction is "consistent with the public interest." 49 U.S.C. § 11324(c). In making that finding the Board must consider, *inter alia*, the transaction's effect on "the adequacy of transportation to the public" (§ 11324(b)(1)), and it is beyond dispute that adverse impacts on passenger transportation must be a part of that analysis. *See, e.g., Rio Grande Industries, Inc. -- Purchase and Trackage Rights -- Chicago, M. & W. Ry. Line Between St. Louis, MO and Chicago, IL*, 5 I.C.C. 2d 952, 968, 978 (1989); Finance Docket No. 32760, *Union Pacific Corporation et al.--Control and Merger--Southern Pacific Rail Corporation et al.*, Decision No. 44 (served August 12, 1996), at 250-51 (Commissioner Owen, concurring).

The strong public interest in preserving and promoting rail passenger service in the United States is also evidenced by Congressional enactment of the *Rail Passenger Service Act of 1970*, Pub.L. 91-518, 84 Stat. 1328 (October 30, 1970) ("*Amtrak Act*"), which as amended is now codified at 49 U.S.C. §§ 24101 *et seq.* *See especially* 49 U.S.C. § 24101(a), in which Congress expressly found that

³(...continued)
will increase the vastly disproportionate share of the Railroad Retirement system's costs that Amtrak already bears.

[p]ublic convenience and necessity requires that Amtrak ... provide modern, cost-efficient, and energy-efficient intercity rail passenger transportation between crowded urban areas and in other areas of the United States,

and that

[m]odern and efficient commuter rail passenger transportation is important to the viability and well-being of major urban areas and to the energy conservation and self-sufficiency goals of the United States.

These unequivocal expressions of public policy by Congress must inform the Board's public interest determinations in this case, insofar as Amtrak or commuter passenger service could be adversely affected by certain aspects of the Application.

* * * *

The Application at issue in this proceeding proposes what is perhaps the largest and most complex railroad restructuring in history, and it entails significant changes in operating patterns and relationships on some of the most heavily-used passenger lines in the country -- including of course Amtrak's Northeast Corridor from Washington, DC through Baltimore, Wilmington, Philadelphia, and Trenton to New York City. Even if the implementation of that restructuring proceeds smoothly -- and recent experience with the UP/SP merger certainly leaves that open to question -- it is inevitable that this extensive and incredibly complex restructuring of freight service will have a significant impact on passenger services that share the same rail lines.

It is a fundamental part of the Surface Transportation Board's statutory responsibility, in safeguarding the public interest, to make sure that the impact of this transaction on passenger service is not unduly harmful -- in other words, that the private and public benefits promised by the Applicants on the freight side are not achieved at the cost of harming passenger service.

II. IMPACT OF NS/CSX/CONRAIL TRANSACTION ON AMTRAK'S NORTHEAST CORRIDOR.

A. Multiple Freight Operators.

Conrail presently provides local and through freight service on the NEC, pursuant to a reserved easement and an associated operating agreement. The Application proposes that NS will take over Conrail's responsibility for providing local freight service over the NEC south of Philadelphia, but that both NS and CSX will have the right to operate through freight service over the Corridor. It also proposes that both NS and CSX would have the right to offer local freight service on the portion of the NEC between Philadelphia and New York City, and that a jointly-owned remnant of Conrail, frequently referred to as "Conrail Jr.," would handle most local freight service for both NS and CSX in the "Shared Assets Areas" of Northern and Southern New Jersey (which together include the entire NEC between Philadelphia and New York City), and as such would also have to right to operate over the NEC in that area.

The easement that Conrail retained when it conveyed the Northeast Corridor to Amtrak provides that Conrail cannot "assign the Freight Service Easement, in whole or in part, other than to a subsidiary, affiliate or successor entity." Likewise, the 1986 Northeast Corridor Freight Operating Agreement between Amtrak and Conrail, which governs Conrail's exercise of its freight easement, provides that "[n]either party shall grant to another railroad or person any right to operate freight service on the NEC or any portion thereof without the agreement of the other party." Thus, Amtrak's consent is required for the Applicants' proposed sharing of the Conrail's NEC freight easement.⁴

Notwithstanding its right to object, Amtrak wants to cooperate with the Applicants, and is in negotiations with both of them regarding the terms under which it will consent to their sharing of Conrail's freight easement. Amtrak is also working with the Applicants to develop schedules for their proposed new NEC freight services that will be compatible with Amtrak and commuter train operations. However, as discussed in the succeeding sections of these Comments and as detailed in the accompanying testimony of witness Larson, this is not a simple task. The portions of the NEC between New York City and Washington on which Conrail operates freight service presently host almost 100 Amtrak trains per day, including the 125 MPH Metroliners, and

⁴Applicants have suggested that the Board can override any restrictions that would preclude them from sharing Conrail's trackage rights under 49 U.S.C. § 11321. Amtrak disagrees: in its view the Board cannot lawfully expand Conrail's easement in that fashion.

more than 300 commuter trains (the number of which will be increasing in the coming years). The NEC is also the only high speed passenger rail line in the world that also accommodates substantial freight traffic. Thus, accommodating the operations of three separate freight operators on the NEC -- Conrail Jr., NS, and CSX -- as Applicants are asking Amtrak to do, is a very formidable challenge, particularly since Applicants propose an increase in the magnitude of those operations and infrastructure improvements to accommodate them. These complex issues should be left to the parties to resolve.

B. Proposed Increases in Freight Operations on the NEC.

At present, witness Larson notes, Conrail no longer operates any through freight trains over the entire length of the NEC. It does operate a number of through trains over certain segments of that line, as well as a significant number of local freights on several segments.

The Applicants propose to reinstitute the through freight service that Conrail has discontinued. Specifically, CSX's Operating Plan projects two (2) through freights operating daily between Washington, DC and Newark, NJ via the NEC (its agreement with NS would allow it to operate at least two additional through trains between Washington and Philadelphia, and an unlimited number between Philadelphia and New York). NS's Operating Plan projects six to eight additional through freights (its agreement with CSX imposes no cap on the number of its freights on the NEC), most of which would be time-sensitive

intermodal operations, including RoadRailers. Additionally, NS proposes to increase clearances on the NEC between Perryville and Bayview Yard, just north of Baltimore, to accommodate double-stacks.

As witness Larson explains, Amtrak will do its best to accommodate the Applicants' proposed increases in freight operations on the NEC. Although the particular schedules originally proposed by Applicants would not have been acceptable (a number of the through freights would have operated outside the 10:00 PM - 6:00 AM "window" and interfered with peak commuter operations), the Applicants have indicated their intent to work out such details in a mutually acceptable manner, and Amtrak is prepared to do so. Amtrak is also willing to cooperate with NS on increasing clearances, provided Amtrak is reimbursed for any associated costs and the work does not interfere with passenger operations.

It should be understood, however, that the available capacity for such additional trains is not unlimited. In particular, Mr. Larson explains that the 10:00 PM - 6:00 AM "window," to which most through freight operations have effectively been restricted since 1987 for both operational and safety reasons, is also the window for scheduled track maintenance. That work generally requires tracks to be removed from service, and therefore constrains nighttime capacity. Such disruptions will likely increase in the coming years because of planned major engineering projects, and the need to upgrade the NEC for even higher passen-

ger service speeds. Moreover, there is significant -- and increasing -- usage of the NEC by both commuter and high speed intercity passenger trains during the nighttime hours.

To summarize, Amtrak is anxious to maximize the efficient utilization of the Northeast Corridor by freight traffic that is compatible with Amtrak and commuter rail operations. It will do everything it reasonably can to accommodate the Applicants' planned freight operations, so long as it can do so without impinging on the passenger services, both commuter and intercity, that depend on the Corridor and are its primary users. While Amtrak expects that these matters will be resolved long before the Board is called upon to decide this case, however, the Board should resist Applicants' suggestion that it intervene and impose Applicants' proposals on Amtrak if these matters are not yet resolved.

III. IMPACT OF NS/CSX/CONRAIL TRANSACTION ON AMTRAK'S OFF-CORRIDOR PASSENGER OPERATIONS.

A. General -- Impact on On-Time Performance.

As witness Larson observes, more than 95% of Amtrak's passenger route-miles are outside the NEC, on lines owned and operated by the freight railroads. On those lines, the quality and reliability of Amtrak's service is heavily dependent on the cooperation and efficient support of the host railroads, for they dispatch all the trains on their lines, including Amtrak's.

Some railroads -- notably including NS -- have been supportive of Amtrak's operations over the years, maintaining consistently high "on-time performance" records for Amtrak trains even when experiencing high volumes of freight traffic over the same lines. Other railroads have not done so well, and sadly, this latter category most definitely includes CSX. In Mr. Larson's words (*Larson VS* at 16),

CSX's performance in handling Amtrak's trains has been consistently poor in recent years, dropping from an average of approximately 85% in FY 1990 and 1991 to an average of just 70% over the past five years under the "ICC formula" (as compared to the 80% level that the ICC deemed to be the minimum acceptable). And until very recently, CSX made no attempt to hide its disdain for all passenger services, both Amtrak and commuter, that operate over its lines.

(Footnote omitted, emphasis in original.)

CSX's poor on-time performance record and historical hostility to passenger operations give Amtrak particular cause for concern, since it will be acquiring from Conrail the rail lines on which two-thirds of Amtrak's trains on the Conrail system operate today. CSX acknowledges that the merger will increase freight traffic on a number of CSX lines on which Amtrak receives particularly poor on-time performance today, as well as on key Conrail lines over which Amtrak operates, such as the "Empire Corridor" between Albany and Buffalo, NY. However, it asserts in the Application that the lines in question all have sufficient capacity to handle the added traffic it projects for them without adversely affecting current passenger operations.

As discussed below, Amtrak respectfully requests that the Board hold CSX accountable for those assurances, by imposing a five-year oversight condition to consider appropriate remedies for any degradation in the on-time performance of CSX-operated Amtrak trains that is traceable to increased freight traffic resulting from the proposed transaction.

B. Empire Corridor (Albany-Buffalo).

Amtrak currently operates approximately 7.4 trains per day over Conrail's east-west line from Albany to Buffalo, as part of its "Empire Service" between New York City and Buffalo/Niagara Falls. CSX's Operating Plan calls for an additional 6 to 7 freight trains per day over most of this line, which by itself is cause for concern in light of CSX's poor systemwide on-time performance. Moreover, Amtrak is also concerned about the impact of these developments on the joint efforts of Amtrak and New York State to improve passenger service in this corridor. (An initial step of that project will be to increase the maximum passenger train speed from 79 MPH to 90 MPH, which will require installation of a supplemental signal system.) Given its evident disdain for passenger operations, there is good reason to fear that CSX will be less cooperative than Conrail was with such publicly-funded improvement projects.

CSX claims that Amtrak will benefit from the track improvements it plans to make to the Empire Corridor. CSX should be held to those representations, and the Board should ensure that CSX's acquisition of the Empire Corridor and the related in-

crease in freight traffic thereon does not hinder the development of high speed rail passenger service in this important corridor. The Board should impose a condition on CSX, requiring it to cooperate with Amtrak and the State of New York in the development of high speed service at public expense between Albany and Buffalo.⁵

C. Detroit-Chicago Corridor.

Finally, Amtrak has concerns regarding the Detroit-Chicago line, over which Amtrak currently operates 6-8 trains per day.⁶

As witness Larson explains, Amtrak is concerned that the additional NS traffic, together with the CP rail haulage traffic,⁷ could adversely affect its planned high speed passenger service over this corridor, the first stage of which -- a joint Amtrak/Michigan/FRA project to install a Positive Train Control System, which will permit 100 MPH-plus speeds on portions of the line -- will be implemented next year. Accordingly,

⁵This condition, and the condition regarding the Detroit-Chicago line discussed below, can be monitored during the five year oversight period Amtrak proposed above.

⁶As witness Larson notes, Amtrak owns the 97-mile portion of this line running from Kalamazoo, Michigan to Porter, Indiana, over which Conrail has trackage rights that NS will acquire.

⁷Amtrak does not object to NS's recent haulage agreement with CP Rail that will result in the operation of up to 10 additional freight trains per day over this line (including the Amtrak-owned portion), although the capacity of these lines is not as great as NS represents in its Operating Plan (*i.e.*, the line is single- rather than double-tracked, and has a limited number of sidings).

Amtrak requests that the Board impose a condition, similar to that requested for the Empire Corridor, above, requiring NS to cooperate with Amtrak and with the State of Michigan in the development of high-speed passenger service in the Detroit-Chicago corridor.

IV. CONCLUSION.

At this juncture, Amtrak neither supports nor opposes the Application.

With respect to the Applicants' proposals for using Amtrak's Northeast Corridor, Amtrak intends to continue negotiations with them, and hopes to reach agreement with them on terms and conditions that will accommodate the needs of all users of the Corridor.

With respect to the proposed transaction's impact on Amtrak's passenger train operations outside the Northeast Corridor, Amtrak sees a risk of adverse impact in three areas, and requests three narrowly-tailored conditions to address them: first, a five-year oversight condition to guard against any worsening of the on-time performance of Amtrak trains; second, a condition that CSX cooperate with Amtrak and the State of New York in implementing high-speed (90 mph or better) passenger service on the Empire Corridor, once public funding is available; and third, a corresponding condition on NS that it cooperate with Amtrak and the State of Michigan in implementing high speed passenger service between Detroit and Chicago.

Respectfully submitted,

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BEFORE THE
SURFACE TRANSPORTATION BOARD

CSX CORPORATION AND CSX)	
TRANSPORTATION, INC. AND)	
NORFOLK SOUTHERN RAILWAY COMPANY)	
COMPANY -- CONTROL AND OPERATING)	
LEASES/AGREEMENTS -- CONRAIL AND)	Finance Docket No. 33388
CONSOLIDATED RAIL CORPORATION --)	
TRANSFER OF RAILROAD LINE BY)	
NORFOLK SOUTHERN RAILWAY COMPANY)	
TO CSX TRANSPORTATION, INC.)	
)	

VERIFIED STATEMENT
OF
JAMES L. LARSON

My name is James L. Larson. I am Assistant Vice President, Operations, of the National Railroad Passenger Corporation ("Amtrak"), with offices at 60 Massachusetts Avenue, N.E., Washington, D.C. 20002.

I joined Amtrak in 1973, and was appointed an Assistant Vice President in 1975. Since that time, my principal responsibility has been the management of contractual and operational relationships between Amtrak and the freight railroads. I served as Amtrak's chief negotiator with respect to all of the current operating agreements with the freight railroads over which Amtrak operates, and with the Consolidated Rail Corporation ("Conrail") and the other freight railroads that operate over rail lines owned by Amtrak on the Northeast Corridor and elsewhere. I have also been responsible for the administration of these agreements,

and for the coordination of Amtrak's operations with those of freight and commuter railroads with which Amtrak shares tracks.

Prior to joining Amtrak in 1973, I was employed for 20 years by the Chicago and North Western Railway. I held a variety of positions in its Transportation Department, including Train Dispatcher, Trainmaster, Transportation Superintendent, and System Rules Examiner.

I am very familiar with the operation and performance of Amtrak's trains throughout the United States; with Amtrak, commuter rail, and freight train operations on the Northeast Corridor; and with the physical characteristics of the Northeast Corridor and the other rail lines over which Amtrak operates. I am also familiar with the plans of CSX Corporation ("CSX") and Norfolk Southern Corporation ("NS") to acquire, divide, and in certain cases share, the rail lines owned by Conrail; for convenience, I will refer to their proposed transaction as the "merger".

AMTRAK'S INTEREST IN THIS PROCEEDING

Amtrak's Operations

Amtrak, which was established pursuant to the Rail Passenger Service Act of 1970, is America's intercity passenger railroad. Its intercity passenger trains presently serve 44 states, operate over more than 23,000 miles of rail lines, and carry more than 20 million passengers each year.

Amtrak's passenger train operations can generally be divided into two categories: trains in the Washington-to-Boston

corridor that for the most part operate over rail lines owned by Amtrak, and trains in the rest of the United States that operate predominantly over freight railroad-owned lines.

Between Washington and Boston, Amtrak's trains operate almost exclusively over rail lines that Amtrak owns and which it acquired at the time of Conrail's formation in 1976. Specifically, Amtrak owns all of its Washington-to-Boston line with the exception of the portions between New Rochelle, NY, and New Haven, CT and within the state of Massachusetts, both of which are owned by state agencies. Amtrak also owns the rail lines between Harrisburg, PA and Philadelphia, PA ("the Harrisburg Line") and Springfield, MA and New Haven, CT ("the Springfield Line") that connect with the Washington-to-Boston line. These lines are collectively referred to as the "Northeast Corridor" ("NEC"). Amtrak's intercity trains share the Northeast Corridor each weekday with more than 1,200 commuter train movements operated by or on behalf of seven commuter rail authorities.

While the Amtrak-owned lines in the Washington-to-Boston corridor account for roughly half of Amtrak's intercity passenger ridership, they comprise less than 5% of the total route miles over which Amtrak operates. With the exception of these lines and several other relatively short line segments elsewhere,¹ Amtrak does not own the railroad lines over which

¹ The longest of the Amtrak-owned line segments off of the Northeast Corridor -- the 97-mile long line between Porter, IN and Kalamazoo, MI that forms part of Amtrak's Chicago-to-Detroit route -- is affected by the merger, and I will discuss it below.

its trains operate. On more than 95% of its system, Amtrak's trains operate over the lines of freight railroads or, in some cases, commuter authorities. Thus, although Amtrak operates its own trains, for the vast majority of its system it is dependent upon freight railroads to dispatch the rail lines on which its trains operate, to give Amtrak trains the priority over freight trains to which they are entitled by the Rail Passenger Service Act, and to enable those trains to achieve an acceptable level of on-time performance.

The Merger

On a number of fronts, the proposed acquisition and division of Conrail by CSX and NS raises issues of concern to Amtrak. These concerns relate both to the NEC and to other Conrail, CSX and NS lines over which Amtrak trains presently operate.

With respect to the NEC, the focus of Amtrak's interest in this proceeding is on the line between New York and Washington, where virtually all of Conrail's freight operations on the Northeast Corridor are concentrated.² Therefore, when I use the terms "Northeast Corridor" or "NEC" henceforth, it should be

² Nearly all of Conrail's freight operations between New York and Boston and on the Springfield Line have been taken over by other railroads. Where Conrail continues to operate on these lines, and on the Harrisburg Line, it provides only limited local freight service that NS and CSX have stated they have no plans to change. As NS has indicated in its application, Amtrak and NS have discussed the possibility of NS operating a limited number of through freight trains over the Harrisburg Line, which has substantial excess capacity, in order to reduce congestion on the parallel line between Harrisburg and Philadelphia that NS will acquire if the merger is approved.

understood that I am referring only to the line between New York and Washington.

Both CSX and NS have indicated in their Operating Plans that they intend to increase the volume of through freight traffic that uses the NEC (subject to negotiation of acceptable arrangements with Amtrak). The NEC's ability to accommodate additional freight operations is very limited, even at night. It is essential that any additional freight train operations be compatible with existing Amtrak and commuter rail operations, and that they not interfere with maintenance-of-way work that must be performed at night because of the intense usage of the NEC during daytime hours.

With respect to other rail lines affected by the merger, Amtrak's concerns involve three discrete areas. First, the on-time performance of Amtrak trains on CSX, particularly in the past year, has been nothing short of abysmal. Thus, it is hardly welcome news to Amtrak or its passengers that the merger will result in CSX acquiring Conrail lines on which two-thirds of Amtrak's trains presently on Conrail lines operate, and will increase the number of freight trains on CSX lines where CSX's present performance in handling Amtrak's trains is particularly poor. Amtrak takes a different view of NS's involvement in the merger, given that NS has generally taken a positive attitude toward the Amtrak trains that operate over its lines and has provided acceptable levels of on-time performance. However, as Amtrak's recent experience with the UP/SP merger demonstrates,

rail mergers often create unanticipated operating problems than can have a devastating impact on Amtrak's on-time performance.

Second, Amtrak is concerned that the merger not interfere with the joint efforts of Amtrak, the FRA, and the State of Michigan to increase speeds on the Amtrak route between Chicago and Detroit. Freight traffic over this route will increase significantly as a result of the merger because of the "haulage" rights that Canadian Pacific Railway ("CP") will receive from NS if the merger is approved.

Finally, Amtrak is also working with the State of New York to increase passenger train speeds on the Amtrak's "Empire Service" between Albany (Schenectady), NY and Buffalo/Niagara Falls, NY. Amtrak is concerned that the acquisition of this line by CSX, and the increase in freight traffic that CSX projects, will impede the joint efforts of Amtrak and the State to achieve this objective.

In the remainder of my testimony, I will address each of these issues and concerns.

I. THE NORTHEAST CORRIDOR

The NEC line between New York and Washington is unique in two respects. First, it is America's only high speed railroad, hosting both the 125 MPH Metroliners and many other Amtrak trains that operate at speeds of up to 110 MPH. Second, unlike other high speed rail lines around the world, it is not utilized primarily or exclusively by high speed intercity passenger trains. Rather, the NEC also accommodates high density commuter

train operations that operate at speeds of up to 100 MPH, and it is the only high speed rail line in the world with significant freight usage. Indeed, the NEC has the highest train densities of any rail line utilized for freight service in the United States.

Most of the NEC has between three and four tracks. However, there are portions that have only two tracks, including about 15 miles of the 51-mile segment between Bayview Yard (Baltimore) and Newark, DE that experiences heavy freight usage. The two main tracks on the NEC, which generally are the center tracks on the four-track segments, are maintained for high speed (up to 125 miles an hour) passenger train operations and are used by most, but not all, of Amtrak's trains, and also by many commuter trains. The remaining tracks, which are maintained to slightly lower standards (generally 90-110 mph maximum passenger train speeds) are predominantly used by freight and commuter trains. In order to minimize the degradation of its high speed tracks that is caused by freight train operations, Amtrak attempts to route freight trains over the lower speed tracks whenever possible. However, in many cases this is not possible, and freight trains therefore make significant use of the high speed tracks.

In light of the intense passenger train usage of the NEC during daytime hours, virtually all maintenance-of-way work must be performed at night. Nighttime track capacity on the NEC will be further constrained in coming years because of the need

to perform major engineering projects and to upgrade the line to accommodate planned increases in passenger train speeds.

The federal government has invested nearly \$2 billion in the NEC since Amtrak acquired it in 1976. An additional \$800 million is presently being expended for the acquisition of new high speed train sets and related support facilities that will enable Amtrak to provide service between Washington and Boston at speeds of up to 150 MPH following the extension of electrification to Boston.

A. Passenger Operations on the NEC

Over 400 passenger trains a day operate on portions of the NEC where Conrail operates freight service. Amtrak operates nearly 100 trains each weekday, including 30 Metroliners. However, the majority of the passenger trains on these portions of the NEC -- more than 300 trains each weekday -- are operated by or on behalf of three commuter authorities: Maryland Rail Commuter Service ("MARC"),³ the Southeastern Pennsylvania Transportation Authority ("SEPTA"), and New Jersey Transit Corporation ("NJT").

Commuter train traffic on the NEC has grown dramatically in recent years. For example, in 1980, there were only four daily commuter trains (two in each direction) between Washington and Baltimore. Today, MARC operates a total of 42 weekday trains between these points, and it has extended the operation of a number of those trains northward from Baltimore to Perryville, MD. Likewise, SEPTA has recently extended its Philadelphia-to-

³ Amtrak is the operator of MARC's commuter service.

Wilmington, DE commuter train service southward to Newark, DE in conjunction with the state of Delaware. Commuter trains now operate over all of the NEC except for the 21-mile segment between Perryville, MD and Newark, DE. Further, MARC, NJT and the State of Delaware all have plans to significantly increase the volume of their commuter train operations on the NEC in the next few years.

There has also been a significant increase in the number of commuter trains operated during the hours of 10:00 PM to 6:00 AM during which the Northeast Corridor experiences its greatest freight usage. MARC, SEPTA and NJT operate approximately 50 commuter trains on the NEC during these hours, and Amtrak operates an additional 18 trains. Amtrak's operations during these hours will increase in coming years because the extension of high speed service from New York to Boston will result in later high speed train operations on the NEC.

Amtrak's NEC passengers expect a very high level of on-time performance. This is particularly true of Metroliner passengers, who are paying a premium fare and are predominantly travelling on business. Excellent on-time performance is equally important to the commuter authorities that operate over the NEC. During the recently-concluded fiscal year 1997, Amtrak's Metroliners achieved an on-time performance of 90%, while its "Northeast Direct" conventional trains that operate between New York and Washington and its "Clocker" trains between New York and

Philadelphia achieved on-time performance percentages of 88% and 94%, respectively.

B. Freight Operations on the NEC

Conrail operates over the NEC between Landover, MD (where the Conrail freight bypass around Washington's Union Station rejoins the NEC) and Lane Interlocking (just south of Newark, NJ).⁴ It provides through, local freight, and unit coal train service.

Local Conrail freight trains operate over most of the NEC during both daylight and nighttime hours. Scheduled through freight trains operate over the portions of the NEC between Baltimore and Newark, DE, and between Morrisville Yard (near Trenton, NJ) and Lane Interlocking. These trains are effectively limited to operating between the hours of 10:00 PM to 6:00 AM as a result of restrictions on NEC freight train operations, including a 30 MPH speed restriction during other hours, that were imposed after the tragic collision between Conrail locomotives and an Amtrak passenger train at Chase, MD, in 1987. (The maximum authorized freight train speed between 10:00 PM and 6:00 AM is 50 MPH.) No through freight train services have operated

⁴ Conrail also conducts limited operations between Landover, MD and Washington Union Station, and in the area of Hunter Interlocking, which is north of Lane Interlocking in Newark, NJ. Conrail does not operate over a 9-mile portion of the NEC between Shore Interlocking in North Philadelphia and Arsenal Interlocking in South Philadelphia; however, NS's Operating Plan indicates that NS will restore a connection at Zoo Interlocking in Philadelphia that will allow its trains to operate over the 6-mile segment between Zoo and Shore (while continuing to bypass Amtrak's 30th Street Station).

over the entire length of the NEC since the late 1980s, when Conrail diverted its remaining through trains between Northern New Jersey and the Washington area to a new interchange with NS at Hagerstown, MD.

The portion of the NEC that is most heavily used for freight service is the 30-mile segment between Conrail's Bayview Yard in Baltimore and Perryville, MD, where Conrail's line to Harrisburg, PA and points west diverges from the NEC. Approximately 15 Conrail freight trains, including coal, intermodal and through merchandise trains, operate daily over this segment.

There are also significant Conrail freight operations on several other portions of the NEC. Unit coal trains destined to and from power plants located on Conrail's Pope's Creek Secondary must utilize the NEC to reach the junction with the Pope's Creek line at Bowie, MD. Most of these trains operate over the 8.5 mile segment of the NEC between Landover, MD and Bowie, but some operate between Perryville, MD and Bowie. Two scheduled through trains in each direction, and additional unit coal trains, operate over the NEC between Perryville, MD and Newark, DE. There are two to three through freight trains a day, as well as significant local train operations, on the portion of the NEC between Morrisville Yard (near Trenton, NJ) and Lane Interlocking (Newark, NJ).

C. Impact of Future NS and CSX
Freight Operations on the NEC

The agreement between NS and CSX for the disposition of Conrail's assets contemplates that both railroads will have

overhead trackage rights on the NEC between Washington and New York. The Operating Plans included in the Application indicate that both railroads intend to reinstitute through freight service over the length of the NEC, from Northern New Jersey to Landover, MD.

In addition, the NEC is the anchor of both the North Jersey Shared Assets Area and the South Jersey Shared Assets Area, which together include the portion of the NEC from Northern New Jersey to Zoo Interlocking in Philadelphia. Within these Shared Assets Areas, local freight service will be conducted for both NS and CSX by the Conrail Shared Assets Operation (which I will refer to as "Conrail, Jr."). NS and CSX will also have certain rights to provide their own local train services within these areas. On the remainder of the NEC, NS will have exclusive local service rights. Thus, the application contemplates that three separate entities will replace Conrail in the operation of freight service on the NEC between Northern New Jersey and Philadelphia, and that two railroads will operate over the NEC between Philadelphia and Washington.

NS's Operating Plan indicates that its proposed operations will result in a net increase of between six and eight through freight trains per day over most of the NEC as compared to Conrail's current operations. These new trains will be primarily time-sensitive intermodal trains, including several new RoadRailer trains. NS also plans to operate doublestack trains between Baltimore and Perryville, MD; it indicates that it plans

to negotiate with Amtrak regarding the clearance increases that will be necessary to accommodate such operations, which NS is prepared to fund.⁵

According to the CSX Operating Plan, CSX plans to operate one daily through freight train in each direction over the NEC between Washington and Newark, NJ. Additionally, as CSX will be acquiring Conrail's Pope's Creek Secondary line, it will assume operation of the unit coal trains destined to and from the power plants on this line.

Many of the NEC freight train schedules that NS and CSX initially proposed in their filings with the Board would not have been compatible with existing Amtrak and commuter train operations on the NEC. These schedules contemplated that a number of through freight trains would operate in part outside of the 10:00 PM to 6:00 AM window. Other trains were ambitiously scheduled to complete their operations over the NEC just before 6:00 AM, which was not acceptable to Amtrak because a single late freight train operating off schedule during the morning peak hours could cause delays to numerous Amtrak and commuter trains.

Amtrak believes that, in the interest of maximizing safety and avoiding interference with passenger train operations, freight train operations on the NEC should continue to be con-

⁵ NS also plans to repair a bridge on and restore a connection to Conrail's Shellpot Branch, which provides a bypass route that allows freight trains to avoid operating through Amtrak's heavily utilized Wilmington, DE station. In light of the additional freight trains that NS and CSX propose to operate through Wilmington, it is essential that this work be performed.

fined to the nighttime hours to the maximum extent possible, and that any exceptions should be made on a case-by-case basis.⁶ Thus, one of Amtrak's objectives in any negotiations over track-age rights fees for use of the NEC will be to develop rate structures that will encourage the shift of additional NEC freight services to nighttime operation.

Amtrak is also concerned about giving three entities (NS, CSX and Conrail, Jr.) the right to conduct local freight operations on the NEC north of Philadelphia. Exercise of these rights by more than one of these entities could increase the potential for interference with intercity and commuter passenger trains operations in this most heavily used portion of the NEC.

Amtrak is in discussions with both NS and CSX in an effort to develop arrangements for their joint operation over the NEC that will accommodate their plans to share Conrail's operating rights, and revised schedules for their proposed new freight services that are compatible with passenger train operations. Amtrak presently anticipates that these discussions will lead to agreements on operating rights and freight train schedules that will facilitate NS and CSX's plans to jointly utilize the NEC for additional freight traffic, while ensuring that any new freight

⁶ Certain of the new trains that NS proposes to operate on schedules that would not be confined to the 10PM to 6AM window are RoadRailer trains. While Amtrak is considering this request, it should be noted that the RoadRailers operated by NS differ from those that Amtrak operates on some of its passenger trains. Amtrak's RoadRailers have passenger-type tightlock couplers; passenger-style wheels; are authorized to operate at passenger train speeds (up to 90 MPH); and are considered passenger equipment by the FRA. NS's freight RoadRailers lack these features.

operations are compatible with existing and planned Amtrak and commuter train operations.

Similarly, Amtrak is also prepared to accommodate NS's desire for increased clearances between Baltimore and Perryville, provided that this can be accomplished without interference with passenger train operations and Amtrak is reimbursed for all associated costs. These costs are likely to be considerably higher than the \$8 million estimated in NS's operating plan because increasing clearances will involve more than simply raising the overhead catenary wires. There are a number of overhead bridges where clearances will need to be increased as well, and engineering studies will be required to determine whether it is feasible to increase clearances on the Susquehanna River Bridge without taking the bridge out of service for an extended period (which would not, of course, be possible).

In short, Amtrak is prepared to work with NS and CSX to accommodate their plans for improved and increased freight train services on the NEC. However, it intends to ensure that any changes in operating rights, freight train schedules, or infrastructure requirements resulting from the merger are compatible with existing and future passenger train operations on the NEC, and do not in any way compromise safety.

II. IMPACT OF THE CONRAIL MERGER ON AMTRAK'S OFF-CORRIDOR OPERATIONS

Amtrak has three concerns about the impact of the proposed merger on its operations outside of the Northeast

Corridor. They pertain to the on-time performance of Amtrak's trains; the merger's impact on the Amtrak-Michigan high speed rail project between Detroit and Chicago; and the merger's effect on future high-speed passenger train service in the corridor between Albany and Buffalo.

A. On-Time Performance

CSX and Conrail are the principal freight railroads over which Amtrak operates in the eastern United States. Amtrak operates 48 daily trains over Conrail and 30 daily trains over CSX. Amtrak's operations over NS are more limited: 6 daily trains, one pair of which is the Washington-Atlanta-New Orleans "Crescent".

CSX would not be Amtrak's choice to take over a significant portion of the Conrail lines on which Amtrak operates. CSX's performance in handling Amtrak's trains has been consistently poor in recent years, dropping from an average of approximately 85% in FY 1990 and 1991 to an average of just 70% over the past five years under the "ICC formula" (as compared to the 80% level that the ICC deemed to be the minimum acceptable).⁷ And until very recently, CSX made no attempt to hide its disdain for all passenger services, both Amtrak and commuter, that operate over its lines. Thus, while the attention that CSX has finally

⁷ The ICC formula measures actual on-time performance on a particular railroad from the time that the train actually begins its operation over that railroad. Under the formula, a train is considered on-time if it arrives at its destination within a "tolerance" that varies from 10-30 minutes, depending upon the distance it travels.

begun to pay to its passenger service obligations is encouraging, it should not escape notice that CSX's sudden interest in passenger train services comes at a time when CSX needs support for its merger plans.

CSX's performance during fiscal year 1997 (October 1996-September 1997) reached a new low. Only 64.6% of Amtrak's trains on CSX were on time, placing CSX next to last in on-time performance among the 16 railroads over which Amtrak operates. Minutes of delay attributable to freight train interference more than doubled over the previous year. And in the first 11 months of fiscal year 1997, CSX earned just 20.9% of the contract incentive payments it was eligible to earn for providing acceptable on-time performance, placing it 9th out of the 12 railroads to which Amtrak pays incentives.⁸

CSX's projections of merger-related freight traffic increases on many CSX lines over which Amtrak operates are therefore cause for significant concern. CSX plans to add seven

⁸ Some railroads over which Amtrak operates use the percentage of incentive payments earned to calculate a so-called "contract" on-time performance rate. This figure does not measure the actual on-time performance that passengers experience, and the manner in which it is usually calculated (by dividing the percentage of incentives earned by 5 and adding 80) both ensures that no railroad can achieve a score of less than 80% and overstates actual "contract" performance because it does not take account of the fact that railroads are not penalized (through reductions in incentive payments otherwise earned) unless their performance falls below 70%. Since this measure is based on the percentage of incentives earned, CSX's 1997 "contract" performance would, of course, be the fourth worst of the railroads to which Amtrak pays incentives, and would be well below acceptable levels (i.e., approximately 90%, because the "contract" performance rate does not take account of many delays that are reflected in the ICC formula).

additional daily freight trains to the Alexandria, VA-to-Richmond, VA line that is utilized by 18 daily Amtrak trains (as well as Virginia Railway Express commuter trains), and 5-6 additional freight trains per day to its Richmond-to-Rocky Mount, NC "A Line" over which 10 daily Amtrak trains operate. On-time performance of the Amtrak trains that operate over these lines has steadily declined in recent years, and delays attributable to freight train interference have significantly increased.

Projected freight train increases on CSX's Pensacola-to-New Orleans line are more modest: the merger will add approximately two additional freight trains per day. However, it is on this line that Amtrak's Sunset Limited has experienced what was (until recently surpassed by trains Amtrak operates over UP/SP) the worst level of freight train interference of any train that Amtrak operates.⁹

CSX also plans to substantially increase freight traffic on a number of lines it will acquire from Conrail on which Amtrak operates. For example, it expects to add approximately 6-7 additional freight trains per day over much of its line between Schenectady and Buffalo, the route of Amtrak's

⁹ In FY 1997, the Sunset Limited averaged over 400 minutes of delay due to freight train interference per 10,000 train miles operated over CSX. The greatest number of these delays occurred on the Pensacola-to-New Orleans segment, which accounts for only a third of the Sunset's mileage over CSX. By way of comparison, Amtrak's Crescent averaged less than 50 minutes of delay due to freight train interference during the same period while operating over NS's Washington-to-Atlanta-to-New Orleans main line.

"Empire Service" between Albany and Buffalo/Niagara Falls, over which Amtrak operates an average of 7 trains each day.

I understand that the applicants in railroad mergers are not bound by the projections concerning future train densities contained in their Operating Plans. Thus, CSX would be free to increase the freight traffic density on all of the lines discussed above to even greater levels following approval of the Conrail merger, regardless of the impact on Amtrak's on-time performance and without any obligation to fund necessary capacity improvements.

CSX has not committed to making any capital improvements to increase the capacity of any of the lines I have mentioned above to accommodate the additional freight traffic that will result from the merger. Rather, it is my understanding that CSX hopes to increase the effective capacity of these lines through better scheduling of its freight trains. While I do not question that CSX could do a better job of scheduling its freight trains, I believe that capacity improvements, such as additional interlockings, adding a second or third main track in certain locations, etc., will almost certainly be required on some of these lines in order to accommodate the increased number of freight trains that CSX plans to operate.

Unfortunately, we have all seen what happens when railroads proceed with mergers on the basis of rosy projections that they will easily be able to increase the number of freight trains on already crowded lines while simultaneously improving

service and causing no harm to Amtrak. Just two years ago, the Union Pacific Railroad was singled out by a leading industry publication as a "Super Railroad" that had demonstrated that it could achieve previously unimaginable train densities and operational efficiencies.¹⁰ Today, UP struggles to implement yet another merger that has brought its rail system to a virtual standstill; threatens to create a nationwide transportation crisis; and has made delays of several hours or more a daily occurrence for Amtrak trains that operate over its lines. If the Board approves the Conrail merger, it should take action to ensure that it will be in a position to take appropriate remedial action, if necessary, before this history repeats itself.

For these reasons, I strongly urge the Board to impose a five-year oversight condition with respect to Amtrak on-time performance so that it will be in a position to remedy any problems that may result from the merger. As a part of such oversight, the Board should also reserve jurisdiction to require CSX or NS, as appropriate, to fund any capacity improvements that the Board finds are necessary on lines where additional freight traffic resulting from the merger causes a deterioration in Amtrak's on-time performance.

B. Chicago-to-Detroit Service.

Amtrak presently operates 6 daily passenger trains between Chicago and Detroit, plus two additional Chicago-to-Toronto trains that utilize the same route between Chicago and

¹⁰ See Trains, November 1995.

Battle Creek, MI. Amtrak owns the 97-mile portion of the line between Porter, IN (where the route diverges from Conrail's Chicago-to-Cleveland main line) and Kalamazoo, MI. Conrail owns the remaining trackage from Kalamazoo to Detroit, and has trackage rights over the Amtrak-owned segment.

Conrail, which has other routes between Chicago and Detroit, presently makes very little use of most of the Porter-to-Detroit line. However, NS, which will acquire both the Conrail-owned portion of this line and Conrail's trackage rights over the Amtrak-owned segment, has entered into a haulage agreement with CP Rail in connection with the merger that will allow CP to utilize the Porter-Detroit line, including the Amtrak-owned segment, for up to ten haulage trains per day. NS states in its application that it expects CP to initially operate eight haulage trains a day in each direction. NS will also increase its own usage of the Porter-Detroit line, adding up to 9 trains a day to some segments, and will utilize the Amtrak-owned portion of the line to serve shippers in the Michigan City area who are presently served via another Conrail line.

The NS Operating Plan states that the addition of this freight traffic is not expected to create any capacity problems on either the Amtrak- or Conrail-owned portions of the Detroit-Chicago line because the entire line is double track. In fact, as the sponsor of NS's Operating Plan, Mr. Mohan, acknowledged during his deposition, this line is not double track, but rather single track; it also has a very limited number of sidings. The

line is capable of handling additional freight trains, and its use by CP trains will provide CP with a better and much more direct route for its Detroit-Chicago traffic. However, capacity improvements will be required to accommodate the levels of traffic that NS/CP haulage agreement allows while avoiding interference with Amtrak's passenger train operations.

Moreover, the Chicago-Detroit line is the site of a demonstration project, to which Amtrak, the State of Michigan and the Federal Railroad Administration have collectively contributed more than \$20 million, that involves the use of a "Positive Train Control System" to allow higher passenger train speeds while at the same time significantly enhancing safety. By mid-1998, Amtrak expects that passenger train speeds will be increased to over 100 MPH on a substantial part of the Amtrak-owned portion of the line, representing the first step in achieving high speed rail service in this important corridor.

Amtrak does not object to the proposed CP Rail haulage operations, provided that the cost of any capacity improvements required to accommodate additional freight operations is borne by NS and/or CP. However, it is also imperative that the additional freight operations resulting from the merger do not interfere with the ongoing development of high speed passenger service. In order to ensure that this is the case, Amtrak requests that the Board impose a condition requiring NS to cooperate with Amtrak and the State of Michigan in publicly-funded efforts to develop

high-speed rail passenger service in the Detroit-Chicago corridor.

C. Albany-Buffalo Empire Service

Amtrak and the State of New York have worked cooperatively for many years to improve Amtrak's "Empire Service between New York City and Buffalo/Niagara Falls, NY. State-funded track improvements in the early 1980s allowed Amtrak to institute higher speeds on the portion of this line between Poughkeepsie, NY and Hoffmans (Schenectady), NY, where Amtrak trains operate today at speeds of up to 110 miles per hour.

Amtrak has been working with Conrail and the State of New York for several years to develop high-speed passenger service on the 267-mile section of the Empire Corridor between Hoffmans and Buffalo. One of the initial objectives of Amtrak and the State is to increase the maximum passenger train operating speed to 90 MPH. In 1995, Conrail downgraded the FRA track classification for this line from Class 5 to Class 4, thus reducing the maximum possible passenger train speed from 90 to 80 MPH. For the most part this did not affect Amtrak's operations, since its trains were already limited to 79 MPH by FRA regulations because the line is not equipped with a supplemental signal system. However, in a few places, Conrail reduced maximum speeds to less than 79 MPH.

In its Operating Plan, CSX has indicated that, after it acquires this line, it will restore the track to FRA Class 5 standards. CSX states that Amtrak will benefit from this work

because, where possible, CSX will increase the maximum passenger train speed to 79 MPH where a lower speed prevails today.

CSX should be held to its representations that its plans for this line will benefit rather than harm Amtrak. The Board should impose a condition requiring CSX to cooperate with Amtrak and the State of New York in increasing passenger train speeds and developing high speed passenger service between Albany and Buffalo. Such cooperation can be monitored during the period of Board oversight suggested earlier to ensure that CSX fulfills its commitment to increase speeds to 79 MPH where applicable and cooperates in publicly-funded efforts to achieve further increases in passenger train speeds.

III. CONCLUSION

Should the Board approve the Conrail merger, Amtrak is prepared to work with NS and CSX to help them achieve their objectives with respect to the sharing of Conrail's freight operating rights and future freight operations on the NEC. However, Amtrak intends to ensure that these objectives are accomplished without interfering with Amtrak and commuter rail operations on the NEC or in any way compromising safety.

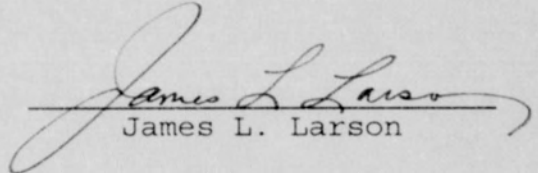
With respect to Amtrak's operations over CSX, NS, and present Conrail lines, Amtrak expects that CSX and NS will live up to the representations they have made in their merger application that the merger will not harm, and indeed will benefit, Amtrak and its passengers. It believes that the three limited oversight and cooperation conditions it asks the Board to impose

are the best means to ensure that this is the case.

VERIFICATION

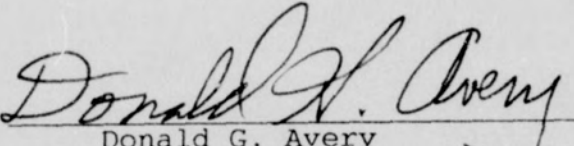
I, James L. Larson, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on October 20, 1997.


James L. Larson

Certificate of Service

I hereby certify that I have this 21st day of October, 1997, caused copies of the foregoing "Comments and Request for Conditions of the National Railroad Passenger Corporation (Amtrak) on the Proposed NS/CSX Acquisition" to be served upon counsel for Applicants by hand, and upon Administrative Law Judge Leventhal and all other parties of record (as shown on the Board's official service list) by first-class mail, postage prepaid.


Donald G. Avery

STB

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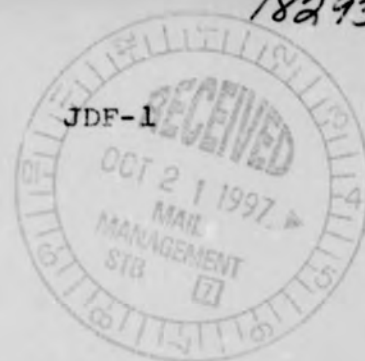
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ORIGINAL

Before the
SURFACE TRANSPORTATION BOARD



Finance Docket No. 33388

CSX CORPORATION AND CSX TRANSPORTATION, INC., NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY-CONTROL AND OPERATING LEASES/AGREEMENTS-CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

VERIFIED STATEMENT OF JOHN D. FITZGERALD

My name is John D. Fitzgerald, with offices at 400 East Evergreen Blvd., Wancouver, WA 98660. I serve as General Chairman for General Committee of Adjustment 386, United Transportation Union (UTU), for lines of The Burlington Northern and Santa Fe Railway Company (BNSF). I filed a notice of intent to participate on August 7, 1997, and am shown on the Board's service list (Decision No. 21), served August 19, 1997, at page 5.

I commenced railroad service in September 1970 on Burlington Northern Railroad Company (BN), and am a Conductor. I became a UTU Local Chairman in 1975, and Assistant General Chairman in 1981. I assumed my present position as General Chairman in August 1993, a full-time elective position.

My railroad experience, and duties with the UTU over the years, have made me fully familiar with railroad operations in the Western United States, and over the BNSF system in particular.

I was an active participant before the predecessor Interstate Commerce Commission (ICC), and this Board, in the Burlington Northern-

Santa Fe (Finance Docket No. 32549) and Union Pacific-Southern Pacific (Finance Docket No. 32760) unification proceedings. I was in opposition to approval of those two carrier transactions, as the record will so indicate.

I oppose the instant applications by which CSX Corporation (CSX) and Norfolk Southern Corporation (NS), and/or their carrier affiliates would divide up the principal lines of the existing carrier, Consolidated Rail Corporation (Conrail).

The BN-SF and UP-SP unifications have not gone well. Indeed, the railroad situation in the Western District is a disaster. The elimination or reduction in competition between these carriers has resulted in inadequate capacity to serve the needs of the public. Ultimately, of course, the lack of capacity to move the nation's present and future commerce will, in turn, depress the economy of the Western District and the nation as well. The operating problems of BNSF and of UP-SP are becoming public. Employees have been aware of the situation for some time, which began with the BN-SF unification and has been magnified with the UP-SP unification. The problems of moving freight have been building up very noticeably since BN-SF.

I view the CSX-NS takeover of Conrail as creating additional problems at the territorial gateways, and in moving commerce between the Eastern and Western portions of the United States. The present capacity and operational problems in the Western District would be increased with a Conrail break-up, and this also would impair the flow of commerce between the Eastern and Western districts.

I am advised that it has been the policy of the Board not to impose employee protective conditions for the benefit of employees of carriers not applicants to the transaction. However, the interest of non-applicant carriers is a factor in determining whether the trans-

action is in the public interest, according to my understanding. BNSF employees are injured by the service problems in the Western District, through reduced employment opportunities, and by less satisfactory working conditions. Of course, safety is also usually compromised.

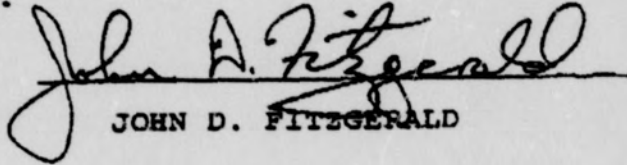
The existing operational and human resource difficulties on UP-SP have been well documented through public news agencies. These difficulties, so well documented on the UP-SP, mirror the same problems that exist on BNSF without the thorough documentation in the public eye. Further, the traffic delays and car shortages so evident on UP-SP have greatly affected the operation and crew supply situation on BNSF, especially in connection with the trackage rights corridors presented to BNSF through Decision 44 in the UP-SP merger case, Finance Docket No. 32760.

These problems in the Western District will become worse, in my judgment, with a consolidation of Conrail facilities into either CSX or NS operations. Any problems generated by a consolidation of Conrail facilities into either CSX or NS operations, will surely have a direct impact upon the members I represent if and when the resulting NS or CSX are subsequently merged with BNSF.

I ask that the applications of CSX and NS be denied.

VERIFICATION

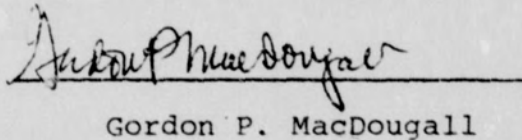
Under the penalties of perjury, I affirm the foregoing is true and correct as stated.


JOHN D. FITZGERALD

Dated at
Vancouver, WA
October 20, 1997

Certificate of Service

I hereby certify I have served a copy of the foregoing upon all those required to be served by Decisions Nos. 21, 27, and 43, by first class mail postage-prepaid.


Gordon P. MacDougall

October 21, 1997

STB

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182927

ORIGINAL

Before the
SURFACE TRANSPORTATION BOARD



Finance Docket No. 33388

CSX CORPORATION AND CSX TRANSPORTATION, INC., NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY-CONTROL AND OPERATING LEASES/AGREEMENTS-CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

VERIFIED STATEMENT OF JOSEPH C. SZABO

My name is Joseph C. Szabo. I serve as Mayor of Village of Riverdale, a community of approximately 14,500 population, in Cook County, IL. I was elected Mayor in April, 1997. Previously, I served as Senior Trustee for 8 years, with a total of 10 years on the Village Board. Earli , I served on the Zoning and Planning Commission for 5 years, with 3 years as Chairman.

Riverdale is the site for major rail operations, and for heavy industry. Two major railroad yards are the Blue Island yard of the Indiana Harbor Belt Railroad Company (IHB), and the Barr yard of CSX Transportation, Inc. (CSXT). Among the industries located in Riverdale is Acme Steel. Riverdale is also served by Illinois Central Railroad Company (IC), Consolidated Rail Corporation (Conrail), Baltimore and Ohio Chicago Terminal Railroad Company (BOCT), and by Metra, an electric commuter line. Riverdale is a station on Gateway Western Railway Company (GWWR), although not physically served by that carrier.

Riverdale is part of the Chicago metropolitan area, including Northwestern Indiana. My review of the application for CSXT and Norfolk Southern (NS) to acquire the lines and operations of Conrail

indicates a projected loss of 215 jobs in the Chicago area, which includes locations at Calumet, 4th Street, Chicago, Lansing, and Burns Harbor, but does not include Kankakee or Elkhart or reduction in system MofW gangs. This information comes from CSX/NS-20, Vol. 3A, pp. 531-46, and is based on calendar year 1996 average monthly employment levels. A further study based on 1995 data indicates a loss of 287 jobs. CSX/NS 26.

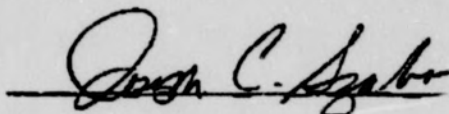
I am advised a major aim of the applications is to reduce the flow of rail traffic through the Chicago gateway, and the amount of rail work performed at Chicago. For example, CSXT states it will expand its Willard Yard (located on the former B&O line in Northwest Ohio) and make it the primary classification yard on the CSX system to handle westbound block swaps and car classifications, with a reduction in the number of cars to be classified at Chicago. CSX/NS-20, Vol. 3A, pp. 19-20. In another illustration, the Norfolk Southern systems says it will route trains via Streator, IL, so as to bypass the Chicago gateway. CSX/NS-20, Vol. 3B, p. 17).

The reduction in rail employment programed for the Chicago area, and reduced rail activities, would be adverse for Riverdale as part of the local economy, and for Riverdale's concentration of rail facilities. Rail employment is important for the local economy, and the availability of competitive rail lines is an inducement for the location and development of industries dependent upon and attracted to rail service. Railroad employees have an important purchasing power for businesses, and they are participants in our community activities. The same is true for persons employed in heavy industry dependent upon rail service.

The applications to dismember Conrail in this and in related proceedings would have a negative impact upon Village of Riverdale.

STATE OF ILLINOIS)
COUNTY OF COOK)

I hereby affirm that I have read the foregoing, and that the contents thereof are true and correct as stated, under the penalties of perjury.



October 21, 1997

JOSEPH C. SZABO

Certificate of Service

I hereby certify I have served a copy of the foregoing upon ^{Leventhal} ~~all~~ ^{and} all parties of record indicated by Decisions Nos. 21, 27, and 43, by first class mail postage-prepaid.

